

Melissa Lake, 3/24/2014

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

2 WESTERN DIVISION

3 HEALTH ADVICE :

NETWORKS, LLC, :

4 :

Plaintiff, :

5 : Case No.

vs. : 1:12-CV-610

6 :

CONTEXT MEDIA, :

7 INC., :

:

8 Defendant. :

9 Videotaped deposition of MELISSA LAKE, a
10 witness herein, taken by the defendant as
11 upon cross-examination, pursuant to the
12 Federal Rules of Civil Procedure and pursuant
13 to notice of counsel as to the time and place
14 and stipulations hereinafter set forth, at
15 the offices of Mr. Hankinson, Keating,
16 Muething & Klekamp, One East Fourth Street,
17 Suite 1400, Cincinnati, Ohio, at 9:30 a.m.,
18 Monday, March 24, 2014, before Deanne
19 Cartwright, a Notary Public within and for
20 the State of Ohio.

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LITIGATION SUPPORT SERVICES, INC.
Cincinnati, Ohio (513-241-5605) / Dayton, Ohio (937-224-1990)

Melissa Lake, 3/24/2014

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APPEARANCES

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FOR THE PLAINTIFF: AARON M. BERNAY, ESQ.
Frost Brown Todd
301 East Fourth Street
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Cincinnati, Ohio 45202
FOR THE DEFENDANT: THOMAS HANKINSON, ESQ.
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One East Fourth Street
Cincinnati, Ohio 45202
FOR THE DEFENDANT: RICHARD J. O'BRIEN, ESQ.
Sidley Austin
One South Dearborn
Chicago, IL 60603

ALSO PRESENT: Kirk McCracken, videographer

Melissa Lake, 3/24/2014

3

1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 MELISSA LAKE, a witness herein, may be taken
5 at this time by the defendant as upon
6 cross-examination and pursuant to the Federal
7 Rules of Civil Procedure and notice to take
8 deposition, under notice all other legal
9 formalities being waived by agreement; that
10 the deposition may be taken in stenotype by
11 the Notary Public Reporter and transcribed by
12 her out of the presence of the witness; that
13 the transcribed deposition was made available
14 to the witness for examination and signature
15 and that signature may be affixed out of the
16 presence of the Notary Public-Court Reporter.

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Melissa Lake, 3/24/2014

4

1		INDEX			
2	WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
3					
	MELISSA LAKE				
4	BY MR. HANKINSON:		6		
5	EXHIBIT IDENTIFIED				PAGE
6	Exhibit 69				67
	Exhibit 70				98
7	Exhibit 71				105
8	OBJECTIONS				PAGE LINE
9	MR. BERNAY:				20 16
	MR. BERNAY:				21 18
10	MR. BERNAY:				22 1
	MR. BERNAY:				22 20
11	MR. BERNAY:				25 13
	MR. BERNAY:				29 5
12	MR. BERNAY:				29 16
	MR. BERNAY:				33 22
13	MR. BERNAY:				34 4
	MR. BERNAY:				39 4
14	MR. BERNAY:				41 15
	MR. BERNAY:				44 12
15	MR. BERNAY:				47 5
	MR. BERNAY:				50 5
16	MR. BERNAY:				50 13
	MR. BERNAY:				53 4
17	MR. BERNAY:				53 13
	MR. BERNAY:				60 3
18	MR. BERNAY:				67 4
	MR. BERNAY:				76 6
19	MR. BERNAY:				79 21
	MR. BERNAY:				80 4
20	MR. BERNAY:				80 18
	MR. BERNAY:				87 6
21	MR. BERNAY:				87 21
	MR. BERNAY:				93 13
22	MR. BERNAY:				93 20
	MR. BERNAY:				94 13
23	MR. BERNAY:				109 10
24			- - -		

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 Cincinnati, Ohio (513-241-5605) / Dayton, Ohio (937-224-1990)

Melissa Lake, 3/24/2014

5

1

INDEX CONTINUED

2

	OBJECTIONS	PAGE	LINE
3			
4	MR. BERNAY:	109	14
	MR. BERNAY:	114	5
5	MR. BERNAY:	115	5
	MR. BERNAY:	115	23
6	MR. BERNAY:	119	1
	MR. BERNAY:	122	8
7	MR. BERNAY:	123	24
	MR. BERNAY:	126	16
8	MR. BERNAY:	126	24
	MR. BERNAY:	127	20
9	MR. BERNAY:	129	7
	MR. BERNAY:	132	4

10

11

12

13

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Melissa Lake, 3/24/2014

6

1 VIDEOGRAPHER: Okay. The time
2 is 9:42 a.m. March 24th, 2014. We are on
3 the video record and the court reporter can
4 swear the witness.

5 MELISSA LAKE,
6 a witness herein, of lawful age, having
7 been first duly sworn as hereinafter
8 certified, was examined and testified as
9 follows:

10 CROSS-EXAMINATION

11 BY MR. HANKINSON:

12 Q. Good morning.

13 A. Morning.

14 Q. Would you please state your name
15 and spell your last name?

16 A. Melissa Lake, L-A-K-E.

17 Q. Thank you for coming in today.

18 We really appreciate it. My name's Tom
19 Hankinson. I'm an attorney for Context Media
09:44 20 which is the defendant in this case. Are
21 you -- do you know who the plaintiff in this
22 case is?

23 A. Context Media.

24 Q. Do you know who the plaintiff

Melissa Lake, 3/24/2014

7

1 is?

2 A. Oh, Healthy Advice Networks.

3 Sorry.

4 Q. And you don't work there now,
5 correct?

6 A. Correct.

7 Q. About when did you leave?

8 A. I left March 30 -- March 30th,
9 2013. Could have been 31st.

09:44 10 Q. Almost one year ago?

11 A. Right.

12 Q. And how long did you work for
13 Healthy Advice Networks?

14 A. I started working there October
15 2009.

16 Q. And what's your current job if
17 you have one?

18 A. I'm in customer service for Raco
19 Wireless.

09:44 20 Q. And is that the only employer
21 that you've had since you left Healthy Advice
22 Networks or have --

23 A. No.

24 Q. Could you take me through your

Melissa Lake, 3/24/2014

8

1 employment since you left Healthy Advice
2 Networks?

3 A. Sure. When I left Healthy
4 Advice I started the next day at a new job
5 selling for DDC, DNA Diagnostic Center. I
6 was in sales for relationship testing. I did
7 that the six months, and I got a great
8 opportunity to work for Raco Wireless so I
9 left there and I've been there since.

09:45 10 Q. How do you spell Raco Wireless?

11 A. R-A-C-O.

12 Q. Are all of those companies
13 located in the Cincinnati region?

14 A. Yes. Well, DDC's in Fairfield.

15 Q. What were the -- so you said you
16 started the next day at DDC. You had that
17 lined up --

18 A. The following Monday. That --
19 that last Fri -- I worked there the last
09:46 20 Friday in March and then I started the
21 following Monday at DDC.

22 Q. You had it lined up?

23 A. Yes.

24 Q. Did you choose to leave Healthy

Melissa Lake, 3/24/2014

9

1 Advice Networks to go to that job?

2 A. Yes.

3 Q. Did you give them some notice
4 and --

5 A. Yes. Two weeks.

6 Q. And would you mind -- actually,
7 I should backup a step and just kind of talk
8 to you a little bit about kind of the ground
9 rules and what we're doing here. Have you
10 ever been deposed before?

11 A. No.

12 Q. Okay. Sorry. I kind of
13 launched into the jobs and everything.

14 A. That's okay.

15 Q. Let's talk generally. As you
16 can see there is a court reporter taking down
17 what we're saying. You're also videotaped.
18 And essentially there will be a transcript
19 made of this, so I will try not to talk over
20 you. You should also try to -- not to talk
21 over me.

22 A. Uh-huh.

23 Q. Even though I sometimes am very
24 slow and I'll have pauses in the middle of my

Melissa Lake, 3/24/2014

10

1 question as I'm thinking which makes it very
2 difficult --

3 A. Uh-huh.

4 Q. -- to the extent that you can
5 wait until I'm done, take a breath and then
6 answer, it will help everybody out. Are you
7 okay with that?

8 A. Yes.

09:47

9 Q. And you're doing a great job so
10 far of answering out loud which is another
11 main thing. Try to avoid shaking your head
12 no or up and down for yes or saying uh-huh
13 which is hard to take down in writing.

14 A. Okay.

15 Q. Appreciate it. If you ever
16 don't understand a question that I ask, I
17 would like you to tell me that. Ask me to
18 rephrase it or to repeat it if you just need
19 to hear it again. Is that okay?

09:47

20 A. That's fine.

21 Q. If you do answer a question, I'm
22 gonna assume that you understood it. Is that
23 okay?

24 A. Yes.

Melissa Lake, 3/24/2014

11

1 Q. There may be a question that I
2 ask that Mr. Bernay objects to in which case
3 right after I finish he'll say objection.
4 Unless he instructs you not to answer, then
5 you'll go ahead and answer the question that
6 I asked. Do you understand that?

7 A. Yes.

8 Q. Is Mr. Bernay representing you
9 today?

09:48 10 A. Yes.

11 Q. And is he -- when did he start
12 representing you?

13 A. I don't know the dates.

14 Q. It was relatively recently?

15 A. Yes.

16 Q. Probably maybe a month ago or
17 less?

18 A. Yes.

09:48 19 Q. Was it specific to this
20 deposition that he became your attorney?

21 A. Yes.

22 Q. And does he represent you with
23 respect to any other matters?

24 A. No.

Melissa Lake, 3/24/2014

12

1 Q. Does anyone else at his firm
2 represent you with respect to the litigation
3 in general?

4 A. No.

5 Q. If you ever need a break, just
6 let me know and we'll take a break but you
7 will have to answer any question that's
8 already pending and then we'll take the
9 break. Is that okay?

09:49 10 A. Yes.

11 Q. If you need water or anything
12 let me know. I don't have it yet but I will
13 soon.

14 A. Okay.

15 Q. Appreciate it. Your patience.
16 Just trying to think if I left anything out
17 of the usual kind of instructions. Do you
18 have any questions at this point about how
19 we're proceeding?

09:49 20 A. No.

21 Q. Would you please take me through
22 your education and employment after high
23 school through your job at Healthy Advice
24 Networks?

Melissa Lake, 3/24/2014

13

1 A. After high school I started
2 working right away. Wasn't sure what I
3 wanted to do, so then I had a few different
4 jobs working at Kroger and things like that.
5 I worked at a day care. But then I got a job
6 at radio station clear -- at the time it was
7 J Corp Communications and then it was bought
8 out and it was Clear Channel Communications
9 and I worked there for eight years and in
09:50 10 be -- while I was there I went to school. I
11 went to school for interior design and I quit
12 that -- I quit going to school. I -- I
13 went -- it wasn't for me. I went there for
14 about a year and a half maybe and -- and then
15 I started working -- after I left Clear
16 Channel, I went to an advertising agency and
17 I worked there for about -- I worked at Clear
18 Channel, slash, J Corp for eight years and
19 then I went to Sunrise Advertising. They
09:50 20 were Flynn Sabatino and Day then they became
21 Sunrise Advertising. I worked there for
22 eight years.

23 And 2009 was a tough year so I
24 was laid off and that's when I got the job at

Melissa Lake, 3/24/2014

14

1 Healthy Advice in the fall. I was laid off
2 in -- in the summer, June 2009. And then
3 after Healthy Advice --

4 Q. We've already been through --

5 A. Okay. Good.

6 Q. Thank you. Appreciate it.

7 A. No problem. And I went to

8 school in betw -- when I was working at
9 Sunrise Advertising, I went to Cincinnati

09:51 10 State for occupational therapy and it was too
11 much for me to go to school and take all
12 those classes and me to work full-time so I
13 took a break. I'm not sure if I'm gonna go
14 back.

15 Q. I'm renovating a room and I have
16 a son with occupational therapy so we should
17 talk. All right. That's just funny. Well,
18 I appreciate that. Thank you. Did you enjoy
19 your time at Healthy Advice Networks?

09:52 20 A. Yes.

21 Q. What team or department were you
22 in?

23 A. We were in the team it was
24 called the CET, customer experience team.

Melissa Lake, 3/24/2014

15

1 Q. And do -- did you call that a
2 team?

3 A. Yes.

4 Q. About how many people were on
5 the team?

6 A. About 15 give or take.
7 Including management.

8 Q. And who was your direct
9 supervisor or manager?

09:52 10 A. When I first started it was Amy
11 Finley and then my direct supervisor the last
12 year I was there was Heather McGauvran.

13 Q. Is this the same team or a
14 different team from customer relationship
15 management?

16 A. It's the same team. They --
17 they use the customer experience team. My
18 business card said customer or -- I'm sorry.
19 Practice relationship manager.

09:53 20 Q. So you were on the same team as
21 Ms. Joyce Lawrence?

22 A. Yes. She sat right across from
23 me.

24 Q. And that team also included Lori

Melissa Lake, 3/24/2014

16

1 Smith, right?

2 A. Yes.

3 Q. And Amy Finley remained in
4 management with oversight of that team when
5 Ms. McGauvran took on a supervisory role,
6 right?

7 A. Yes.

8 Q. And so did you report to
9 Ms. McGauvran then and then Ms. McGauvran
10 reported to Amy Finley?

09:54

11 A. Yes.

12 Q. For about the last year that you
13 were at Healthy Advice?

14 A. I would say so. It may have
15 been a little bit more but I would say it was
16 the last year.

17 Q. And how do you call Healthy
18 Advice for short? Do you say Healthy Advice
19 or HAN or --

09:54

20 A. HAN or Healthy Advice, yes.
21 They did change names so --

22 Q. Now it's called Patient Point?

23 A. Correct.

24 Q. Did that name change occur while

Melissa Lake, 3/24/2014

17

1 you were still working there?

2 A. Yes.

3 Q. If I use HAN or Healthy Advice,
4 for the purposes of the questions today will
5 you understand that I mean that same company
6 regardless of what its name was at the time?

7 A. Yes.

8 Q. And will you also understand if
9 I use Patient Point that I still mean the
10 same company?

09:55

11 A. Yes.

12 Q. Appreciate that. Thank you.
13 Can we take a break?

14 VIDEOGRAPHER: Okay. We are
15 going off the video record at 9:54 a.m.

16 (Break taken.)

17 VIDEOGRAPHER: Okay. We are
18 back on the video record at 9:59 a.m.

19 Q. When I'm talking about your
20 team, what are you most comfortable with me
21 using: Customer experience team or practice
22 relationship management team?

10:00

23 A. Practice relationship management
24 team.

Melissa Lake, 3/24/2014

18

1 Q. Where did the customer
2 experience team term come from?

3 A. It has -- the sales assistants
4 would be in it, management on our floor, and
5 also digital.

6 Q. So it's a more general term?

7 A. Uh-huh.

8 Q. When you say digital, does that
9 refer to people who work on creating content
10 to run on HAN's network?

10:01

11 A. No.

12 Q. What is digital?

13 A. It is the folks that schedule
14 the de-installs and the re -- they -- they
15 deal with the -- they deal with the techs
16 that go out to doctor's offices to
17 troubleshoot, de-install, reinstall new
18 customers.

19 Q. Does Healthy Advice employ its
20 own techs or does it schedule techs that come
21 from a vendor?

10:01

22 A. It comes from a vendor.

23 Q. And are there various vendors
24 that they use throughout the country?

Melissa Lake, 3/24/2014

19

1 A. Yes.

2 Q. And when we say techs it's
3 T-E-C-H-S?

4 A. Yes.

5 Q. Did you have any other
6 supervisors or managers during your time at
7 Healthy Advice other than Heather McGauvran
8 and Amy Finley?

10:02

9 A. We had a head supervisor of the
10 whole CET team. It was Jill Brewer.

11 Q. Did she leave the company at
12 some point?

13 A. Yes.

14 Q. When was that?

15 A. Right when we became Patient
16 Point. Shortly after that.

17 Q. Do you know what the
18 circumstances were of her leaving the
19 company?

10:02

20 A. Not -- no. I don't recall. It
21 was on good terms.

22 Q. She chose to leave?

23 A. Yes.

24 Q. Did it have anything to do with

Melissa Lake, 3/24/2014

20

1 the name change or a merger having to do with
2 the name change?

3 A. I don't know.

4 Q. Did you ever have a conversation
5 with Ms. Brewer about the circumstances of
6 her departure?

7 A. No. Just well-wishes.

8 Q. Did anyone else ever tell you
9 why she left?

10:03 10 A. I mean, there was speculation
11 but I don't know exactly why. I -- I'm not
12 real sure. I don't remember.

13 Q. Just if -- would you just tell
14 me every different reason that you heard from
15 any source and where you heard that from?

16 MR. BERNAY: Object to the form.
17 You can answer the question.

18 A. I think she wanted to save our
19 jobs so she was stepping down. That was my
10:03 20 speculation.

21 Q. And where did that come from?

22 A. It was her choice so she didn't
23 want to see anybody else leave the company.
24 She decided to leave.

Melissa Lake, 3/24/2014

21

1 Q. Where did you hear that?

2 A. She told us. She -- we had a
3 meeting and she told everybody.

4 Q. Did she say why it was necessary
5 for her to leave in order to save other
6 people's jobs?

7 A. No. Not that I remember.

8 Q. Did she connect it to the name
9 change to Patient Point or a merger during
10 that conversation?

11 A. I don't remember.

12 Q. Did she discuss any new
13 management coming in?

14 A. No.

15 Q. Did you have an understanding at
16 that time of why Mr. Brewer leaving would be
17 necessary to save other people's jobs?

18 MR. BERNAY: Object to the form.
19 You can answer.

20 A. Can you repeat that again?

21 Q. Do you have -- did you have any
22 understanding at the time of why Ms. Brewer
23 would have to leave to save someone else's
24 job?

Melissa Lake, 3/24/2014

22

1 MR. BERNAY: Same objection.

2 A. No. I really -- I -- I really
3 didn't know. I know that whenever companies
4 change and they get -- because I've been
5 through this with Clear Channel and J -- J
6 Corp and Clear Channel. When -- when change
7 like that happens, there's a lot of people
8 that go their separate ways for whatever
9 reason and I figured that's, you know, what
10 she was doing.

11 Q. Did the structure of the
12 practice relationship management team change
13 around the time of the name change to Patient
14 Point or did it stay the same?

15 A. It stayed the same.

16 Q. Did someone replace Ms. Brewer?

17 A. No.

18 Q. To whom do the customer
19 experience team members report now?

20 MR. BERNAY: Objection. You can
21 answer.

22 A. Well, it's been a year but when
23 I -- I -- I've always reported to Amy or
24 Heather. Heather first. If Heather wasn't

Melissa Lake, 3/24/2014

23

1 available, I would report to Amy Finley.

2 Q. And that didn't change when
3 Ms. Brewer left the company?

4 A. No.

5 Q. Did Ms. Finley begin to report
6 to someone else besides Ms. Brewer?

7 A. I don't think so. I don't know.

8 Q. At some point she had to have a
9 manager but you're not sure who it was?

10:06 10 A. No. It may have been Kimberly
11 Theiss.

12 Q. What was Kimberly Theiss's role?

13 A. She was in charge of the digital
14 department and I believe it was called field
15 service digital, FSD.

16 Q. Her department?

17 A. Yes.

18 Q. What were your job duties on the
19 practice relationship management team?

10:07 20 A. They were to engage the
21 customers, troubleshoot, follow up on any
22 non-connects. We had proactive orders. We
23 had a task list that we had to complete every
24 day. So they had all kinds of orders.

Melissa Lake, 3/24/2014

24

1 Q. What did you call them? What
2 orders?

3 A. Task -- a task list with orders.
4 They could be work generals, proactives.
5 It's been a while so --

6 Q. You would receive a task list
7 each day?

8 A. It would be -- yeah. Every day
9 you would log on and your task list would be
10 there so if there's something that you needed
11 to follow up on or if you wanted to create a
12 proactive and check on a practice.

13 Q. So the duties that you mentioned
14 were engage the customer, troubleshoot and I
15 guess troubleshooting included following up
16 on non-connects?

17 A. Uh-huh.

18 Q. Do I have that correct?

19 A. Correct.

20 Q. And the task list was a way each
21 day for each member of the team to see what
22 they should work on that day? Is that --

23 A. Yes.

24 Q. Is that correct?

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Melissa Lake, 3/24/2014

25

1 A. Yes.

2 Q. Who generated the task list?

3 A. Heather gen -- Heather would
4 provide us proactives. She would load those
5 in but if you had a non-connect it -- it
6 would automatically come to you if it was
7 your territory and then you would date out
8 whatever you're working on for whatever date
9 you want it to be to check on things if need
10 be.

10:09

11 Q. Did the CMS generate the task
12 lists based on input that people put into it?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 A. Yes, it did. Trying to think of
16 how the non-connect -- I believe the
17 non-connects -- I don't know if that was
18 automatically generated or if somebody sent
19 them. I can't remember. It's been a while.

10:10

20 Q. When you dated out items that
21 you were working on, did you do that by
22 entering them into CMS?

23 A. Yes.

24 Q. What does CMS stand for if you

Melissa Lake, 3/24/2014

26

1 remember?

2 A. Customer management system.

3 Q. When -- do I understand you
4 correctly that you as an individual could
5 also create your own proactive item to work
6 on?

7 A. Yes.

8 Q. And is that what you meant when
9 you said if you create a proactive?

10:11 10 A. Yeah. You can create a
11 proactive to check on the customer, make sure
12 they're happy. Can also create work generals
13 too.

14 Q. What's the difference between a
15 work general and a proactive?

16 A. The work generals were something
17 that absolutely need to be touched. The
18 proactives if it was something you couldn't
19 get to that day, it's okay. The work
10:11 20 generals were very important because they
21 were usually non-connects. You needed to
22 find out what was going on with the practice.

23 Q. What is a non-connect?

24 A. When they are not connect --

Melissa Lake, 3/24/2014

27

1 when the flat screen in their waiting room is
2 not connecting with our system for the loop
3 that plays.

4 Q. Have you heard the term
5 heartbeat?

6 A. Yes.

7 Q. When a system in a doctor's
8 office's waiting room is working properly,
9 Healthy Advice receives a heartbeat from that
10 CPU, correct?

11 A. Correct.

12 Q. When the heartbeat stops is that
13 what's referred to as a non-connect?

14 A. Yes.

15 Q. Is that an indication to Healthy
16 Advice that either someone has unplugged the
17 system or there's a technical problem with
18 the system?

19 A. Yes.

20 Q. Do you know of any other reasons
21 for non-connects?

22 A. The system not being there
23 anymore.

24 Q. Non-connects might occur based

Melissa Lake, 3/24/2014

28

1 on the system being unplugged, not being
2 there anymore, or malfunctioning?

3 A. Correct.

4 Q. How quickly would someone reach
5 out to a practice after the non-connect was
6 received by Healthy Advice?

7 A. As soon as possible.

8 Q. And generally how long would it
9 take?

10:13 10 A. Well, if it's on a weekend it
11 would take the -- the -- the next working
12 business day for us to get that non-connect.
13 So Monday mornings there were some
14 non-connects to deal with and --

15 Q. And the first action to be taken
16 would be to call the practice?

17 A. Yes.

18 Q. When you were dealing with a
19 non-connect, would you then ask the practice
10:14 20 whether the system was working or not?

21 A. Yes.

22 Q. Sometimes were there
23 connectivity issues?

24 A. Yes.

Melissa Lake, 3/24/2014

29

1 Q. Did the connectivity issues that
2 the practices in your territory experienced
3 have more frequency at the beginning of your
4 time with Healthy Advice than later on?

5 MR. BERNAY: Object to the form
6 of the question. You can answer.

7 A. It was pretty steady.

8 Q. From 2009 to March of 2013 the
9 amount of connectivity issues that you
10 experienced in your territory remained
11 steady?

12 A. Yes.

13 Q. And were non-connects based on
14 connectivity issues a large part of the
15 non-connects?

16 MR. BERNAY: Object to the form.
17 You can answer.

18 A. There were all sorts of
19 different issues.

20 Q. Lots of different technical
21 issues.

22 A. Technical issues or a practice
23 just would close down. They would close down
24 and then there were competitors that would

Melissa Lake, 3/24/2014

30

1 come in. There were -- there were technical
2 issues. Sometimes their internet was down.
3 Sometimes -- sometimes we would call a
4 practice and the system wouldn't even be
5 there. I mean, there's been all kinds of
6 issues from competitors to theft.

7 Q. When you say technical issues,
8 what are the technical issues that arise with
9 the system?

10:16 10 A. It could be that the flat screen
11 went out, it could be that the CPU needed to
12 be replaced, and it could be that the lines,
13 the tele -- analog lines are down or the
14 internet is down.

15 Q. When you began working for
16 Healthy Advice, were the systems in doctor's
17 office's waiting rooms connected by fax?

18 A. Some were. Some we provided a
19 dedicated phone line as well.

10:17 20 Q. About how many were fax versus
21 how many had a dedicated phone line?

22 A. I -- I can't answer. I don't
23 know.

24 Q. At some point did Healthy Advice

Melissa Lake, 3/24/2014

31

1 start to provide its content and programing
2 through the internet instead?

3 A. Yes, they did.

4 Q. Do you remember about when that
5 happened?

6 A. I know it was going on when we
7 were Patient Point and I can't remember when
8 we started doing that. I don't know if it
9 was when -- at the end of the being Healthy
10 Advice or Patient Point. I can't remember.

11 Q. 2011? 2012?

12 A. I -- I don't remember.

13 Q. When Healthy Advice or Patient
14 Point started providing content to doctor's
15 offices over the internet, was it a gradual
16 process of replacing the fax lines with
17 internet-based service?

18 A. We would just -- they would
19 schedule service for a tech to go out and run
20 a cat five cable and share their internet
21 into one of their ports and run that and then
22 plug it into the CPU.

23 Q. They didn't just do it all in
24 one day though?

Melissa Lake, 3/24/2014

32

1 A. Not all the territory. No. No.

2 Q. So --

3 A. We would have to make sure it
4 was okay with the practice.

5 Q. Over what period of time did
6 they phase in internet service?

7 A. I don't -- not at the beginning
8 of working there. Not in 2009. But I can't
9 remember when it started.

10:19 10 Q. I'm sorry. I'm trying to ask
11 from the point --

12 A. Oh.

13 Q. -- when they started -- from the
14 point when they gave the first practice in
15 your territory internet connectivity instead
16 of fax or phone to the point when all the
17 practices were running based on the internet,
18 how long did that take?

10:19 19 A. When I left they weren't all
20 hooked up to the internet at that point when
21 I left. I mean, it was a process that they
22 were trying to get to.

23 Q. And it had been going on for at
24 least a year, right?

Melissa Lake, 3/24/2014

33

1 A. I would say so. I don't know.

2 Q. But about a year at least?

3 A. Maybe six months. I -- I --

4 my -- my -- I'm -- have a bad memory.

5 Q. It wasn't complete when you left
6 in March of 2013, correct?

7 A. Correct.

8 Q. Do you have a sense for about
9 how many practices in your territory still
10 had fax or phone lines at that time?

11 A. No.

12 Q. As a percentage?

13 A. No. But I know they were
14 working hard at getting this done and I -- I
15 mean, we were -- we were doing well at
16 getting them done but it wasn't an overnight
17 thing to do.

18 Q. Did practices who received their
19 content over a fax line have more
20 connectivity problems than practices who
21 received it over the internet?

22 MR. BERNAY: Object to the form.
23 You can answer.

24 A. I don't remember.

Melissa Lake, 3/24/2014

34

1 Q. There were connectivity issues
2 even with practices that were receiving
3 content over the internet?

4 MR. BERNAY: Again, object to
5 the form. You can answer.

6 A. I'm sure there was. I'm not
7 sure of how many or why or what the reasons
8 were.

9 Q. But over the course of your full
10:21 10 employment at Healthy Advice from around
11 October 2009 to March 2013, some significant
12 part of your day was spent calling practices
13 who had connectivity issues, correct?

14 A. Yes.

15 Q. And when I say connectivity
16 issues, I mean technical problems with the
17 connection. Not just that someone had
18 actually chosen a different system or
19 unplugged the system. Did you understand
10:21 20 that to be what I meant?

21 A. Yes. A lot of times FSD would
22 call when there wasn't a heartbeat and find
23 out what was going on and they would
24 troubleshoot first and when they would find

Melissa Lake, 3/24/2014

35

1 out that it was more than a connectivity
2 issue then it was a work general sent to me.

3 Q. Sometimes for the technical
4 problem based on the heartbeat, FSD would
5 take care of it without you even being
6 involved, is that right?

7 A. Yeah. They would send us an
8 e-mail out of courte -- out of courteous --

9 Q. As a courtesy?

10:22 10 A. As a courtesy.

11 Q. Very good.

12 A. Yes. Thank you.

13 Q. So each time that field service
14 digital took care of a technical issue based
15 on the cutoff of the heartbeat, they would
16 send you or somebody else in your team an
17 e-mail saying that they had stepped in to do
18 that?

10:22 19 A. Not every time. No. If it was
20 something they said they wanted to cancel, if
21 the practice said I want to cancel, or if the
22 practice said it's not here anymore, it would
23 go right to us. They wouldn't do anything
24 else with it.

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Melissa Lake, 3/24/2014

36

1 Q. After field service digital
2 called to ask what was going on? Yes?

3 A. Yes.

4 Q. Did -- what territory did you
5 have?

6 A. I had -- when I left I had New
7 Jersey, Arizona and I can't remember the
8 rest. Those were the two big ones I had.

9 Q. There were some other states?

10:23 10 A. Yeah. My territory changed a
11 little bit before that and I had California
12 for a while.

13 Q. Just California?

14 A. I had a lot of the west coast.
15 California, Washington state. Trying to
16 think if I had any east coast territory. I
17 may have had a real small east coast
18 territory. Nothing over -- nothing
19 overbearing or anything like that.

10:24 20 California was a big territory to take care
21 of.

22 Q. In the fall of 2009 when you
23 started at Healthy Advice your territory was
24 California, Washington state and maybe

Melissa Lake, 3/24/2014

37

1 another smaller state?

2 A. Actually, no. I had Chicago and
3 some mid-Western states and I can't remember
4 which ones they were but I know Chicago was
5 the big one.

6 Q. And then at some point your
7 territory changed to California,
8 Washington --

9 A. Yes.

10:24 10 Q. -- state and possibly another
11 smaller state?

12 A. Yes.

13 Q. After that it changed again to
14 New Jersey, Arizona and some others?

15 A. Yes.

16 Q. Did you notice a difference
17 between the regions in the issues that you
18 were dealing with?

19 A. No.

10:25 20 Q. Did part of your job include
21 fielding calls by practices who wanted to
22 join the system?

23 A. Yes.

24 Q. Did you ever have to turn away

Melissa Lake, 3/24/2014

38

1 practices because there wasn't room?

2 A. Yes.

3 Q. Why did that happen?

4 A. Actually, can we back up? Not
5 because there wasn't room. You mean in
6 their -- in their lobby? Do --

7 Q. No. Go ahead.

8 A. Okay.

9 Q. Why couldn't they join?

10:25 10 A. If they didn't have the correct
11 specialty for what we were looking for for
12 that program.

13 Q. Did you ever encounter
14 situations in which a practice had the
15 correct specialty but the network had enough
16 subscribers so that the practice was turned
17 away?

18 A. Yes.

19 Q. Which networks did that happen
10:26 20 with?

21 A. I don't remember which ones.
22 They -- they would open and close enrollment
23 so I don't remember which ones but there were
24 times where it was closed.

Melissa Lake, 3/24/2014

39

1 Q. Were there times when each of
2 Healthy Advice's five networks were closed or
3 did some of them stay open all the time?

4 MR. BERNAY: Object to the form.
5 You can answer.

6 A. From what I remember, I believe
7 PCN was always open. I can't remember.

8 Q. How did you receive the
9 information that a certain network was not
10:27 10 accepting new practices at a certain time?

11 A. From our supervisor.

12 Q. In what form? An e-mail?

13 A. We would have weekly meetings so
14 they would keep us updated on what was open
15 and what wasn't.

16 Q. Was that recorded in writing at
17 any point?

18 A. I don't remember.

19 Q. If you turned a practice away
10:28 20 based on the network being at capacity
21 already, would you enter that information in
22 CMS?

23 A. Yes.

24 Q. So CMS includes practices who

Melissa Lake, 3/24/2014

40

1 don't even have a relationship with Healthy
2 Advice, correct?

3 A. Yes.

4 Q. Did you encounter situations
5 where Healthy Advice turned away a practice
6 that had the correct specialty because there
7 were not techs available to go out and
8 install the system in that region?

9 A. Can you repeat that again?

10:28

10 Q. Did you ever have to turn a
11 practice away who wanted to join the system
12 and had the correct specialty because there
13 weren't techs available to go out and install
14 the system in that practice's geographic
15 region?

16 A. No.

17 Q. Were there any other reasons
18 that practices who had the correct specialty
19 and wanted to join a Healthy Advice Network
20 were turned away?

10:29

21 A. No.

22 Q. Do you know how it was
23 determined that a network was at capacity and
24 no longer accepting new practices?

Melissa Lake, 3/24/2014

41

1 A. That all came from supervisors.

2 Q. You didn't have any
3 understanding of why they chose to close or
4 open a network?

5 A. No.

6 Q. Going back to your task list
7 each day, it sounded to me -- and just
8 correct me if I'm wrong. It sounded to me
9 like part of it might have been automatically
10 generated from past entries into CMS but then
11 part of it could be adjusted by Ms. Finley or
12 Ms. McGauvran or by the individual member of
13 the team by creating additional work generals
14 or proactives. Do I have that correct?

15 MR. BERNAY: Objection. You can
16 answer.

17 A. Yes.

18 Q. And was that done on a daily
19 basis?

20 A. Yes.

21 Q. About how long is that task
22 list?

23 A. It depends what was loaded the
24 night before. If there was a lot of

Melissa Lake, 3/24/2014

42

1 proactives loaded the night before, then your
2 task list will be long but you just needed to
3 prioritize it.

4 Q. Was it ever over five pages
5 long?

6 A. No.

7 Q. It would be a -- like a bullet
8 pointed list? How did it look?

9 A. It looked like -- almost like an
10 Excel spreadsheet almost and then you could
11 organize it under the type of orders. You
12 could organize it by the dates. So you could
13 organize it to what -- what was your --
14 whatever way you wanted to do it.

15 Q. Did it pop up within CMS?

16 A. My task list?

17 Q. Yes.

18 A. Yes. It was in CMS.

19 Q. Were you able to look at prior
20 week's task lists if you wanted to check
21 them?

22 A. I don't believe so. I believe
23 management might have been able to but once
24 you closed that task, it was off your list.

Melissa Lake, 3/24/2014

43

1 Q. Do you know if there was a
2 record of what was on each team member's list
3 each day that management could then check
4 back on later?

5 A. I don't know what they could
6 look at and what they couldn't but they kept
7 track of your task list so I'm assuming so.
8 I don't know.

9 Q. How -- how did they keep track
10 of it? Like what -- how did they interact
11 with you about that?

12 A. They would let you know how many
13 proactives you've closed, how many work
14 generals you've closed. CM followups.
15 Cancels.

16 Q. Were there ever any work
17 generals or proactives added in CMS specific
18 to Context Media?

19 A. No. They -- they're -- they
10:33 20 wouldn't say anything. If it was, it would
21 be something in maybe a work general in the
22 notes field indicating competitor, something
23 like that, but, no, there wasn't any special
24 task list for Context Media. Would either

Melissa Lake, 3/24/2014

44

1 have been on a cancel request or work
2 general.

3 Q. Do you recall any particular
4 efforts to speak to practices because of
5 anything that Context Media did or said?

6 A. To speak with practices? Can
7 you repeat that again?

8 Q. Sure. Do you recall any
9 particular efforts that were made to speak
10 with practices based on things that Context
11 Media was doing in the marketplace?

12 MR. BERNAY: Object to the form.
13 You can answer.

14 A. Yes. We, first of all, would
15 find out what was going on and if FSD said
16 the equipment's not there or if they told us
17 the equipment was mailed to us, then we would
18 be able to see who it came from and ask them
19 why did you cancel, why -- why is it sent
20 back to us, and they would let us know.

21 Q. That's something that would
22 happen in the case of any competitor switch
23 out?

24 A. Yes.

Melissa Lake, 3/24/2014

45

1 Q. That activity would be reflected
2 in the CMS comments field?

3 A. Yes. And probably in the notes
4 too.

5 Q. Would there be any information
6 provided by the practice about the reason
7 that it was switching out -- let me start
8 that question over again.

9 A. Okay.

10:35 10 Q. When a practice either called or
11 e-mailed to say that it wanted to cancel its
12 Healthy Advice subscription --

13 A. Uh-huh.

14 Q. -- what would happen?

15 A. We would find out why. We --
16 that would be the first question. And we
17 would want to know where the equipment is and
18 we would also tell them that they signed a
19 enrollment agreement which means that it is
10:35 20 either a 30- or 60-day notice for us to take
21 the equipment down and we would schedule it
22 out if we were sure that's what they wanted.
23 If they wanted to think about it, I wouldn't
24 schedule it out 60 days. If I heard they are

Melissa Lake, 3/24/2014

46

1 canceling and this is why, I would schedule
2 it 30 to 60 days out.

3 Q. Depending on the enrollment?

4 A. Correct.

5 Q. How would you get the word to
6 call that practice?

7 A. From the non-connect or the
8 equipment mailed back to us.

10:36

9 Q. Did practices also sometimes
10 call to cancel?

11 A. Yes.

12 Q. Did practices e-mail to cancel?

13 A. Not as much. I -- maybe I've
14 seen it maybe once or twice.

15 Q. Were the activities that you
16 undertook different based on whether it was
17 Context Media or another competitor or a
18 regular television?

19 A. Can you repeat that?

10:37

20 Q. Did it make a difference to your
21 job and the communications that you were
22 supposed to undertake whether the practice
23 was cancelling in order to start with Context
24 Media or whether the practice was canceling

Melissa Lake, 3/24/2014

47

1 to switch to a different competitor or
2 whether the practice was canceling to just go
3 with television instead of having an
4 in-waiting room information network?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. There were many reasons why
8 practices cancel and -- I'm not sure what
9 your question is for that. I'm not -- I'm
10 not sure what you're asking me.

11 Q. What are the reasons that
12 practices cancel?

13 A. There's a list of them. Number
14 one could be a competitor. Number two, maybe
15 they just didn't want anything in their
16 waiting room. They were moving. There --
17 there could be a list of them of different
18 reasons why.

19 Q. And I don't want to bore you but
20 I -- I think I need to ask you to remember
21 all the different reasons that you can.

22 A. Okay. They weren't allowed to
23 have us connect to their internet -- that was
24 a big reason -- due to HIPAA reasons which

Melissa Lake, 3/24/2014

48

1 didn't seem like that -- we weren't getting
2 any other information but they were
3 instructed due to HIPAA. Some people thought
4 that they -- thought that it just wasn't
5 enough for them, the patient education
6 system. Moving. It just didn't -- I didn't
7 work in their new waiting room. And a lot of
8 times this was -- this was due just to space.
9 They just didn't have the wall space.

10:40

10 Q. Can you think of any others?

11 A. No.

12 Q. Do you mind if I just kind of
13 rattle off some and see if -- I'm not trying
14 to put words in your mouth --

15 A. Uh-huh.

16 Q. -- so just tell me if they are a
17 reason --

18 A. Uh-huh.

10:40

19 Q. -- that a practice canceled in
20 your experience or if it's not tell me you --

21 A. Okay.

22 Q. -- don't remember it being one.

23 A. Okay.

24 Q. The -- well, first of all, when

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Melissa Lake, 3/24/2014

49

1 you say sometimes it just wasn't enough for
2 them, the patient education system, what did
3 you mean by that?

4 A. They just thought the patients
5 weren't engaged enough.

6 Q. Did they say why?

7 A. No. Not that I remember.

8 Q. Just that it wasn't interesting
9 enough for the patients to actually watch it?

10:41 10 A. Yes.

11 Q. Would it be fair to call that
12 the quality of the health-related
13 programming?

14 A. No. Because people really liked
15 the patient education that we provided. I
16 think maybe it was maybe the location in the
17 waiting room. It -- they just weren't --

18 there -- just had a lot of different reasons
19 why the patient wasn't watching it. Maybe --

10:41 20 maybe there was -- just the chairs weren't
21 setup right in the office and the wall
22 space --

23 Q. Uh-huh.

24 A. -- it just wasn't engaging

Melissa Lake, 3/24/2014

50

1 enough.

2 Q. If they're switching to a
3 competitor though, those factors would be the
4 same with the competitor, right?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. Yeah. Yeah. Definitely.

10:42

8 Q. So if somebody was switching to
9 a competitor and they -- the reason they gave
10 was that the system wasn't engaging enough,
11 that would have to do with the quality of the
12 content, right?

13 MR. BERNAY: Objection. You can
14 answer.

15 A. It could have to do with that
16 and where the flat screen is located.

17 Q. How would that change with the
18 competitor?

10:42

19 A. Maybe they were able to put it
20 in a -- in a different spot for them.

21 MR. BERNAY: We've been going
22 about an hour. Why don't we take a break?

23 MR. HANKINSON: Okay.

24 VIDEOGRAPHER: Okay. We are

Melissa Lake, 3/24/2014

51

1 going off the video record at 10:41 a.m.

2 (Break taken.)

3 VIDEOGRAPHER: Okay. We are
4 back on the video record at 10:51 a.m.

5 MR. HANKINSON: I'd like focus
6 on the reasons that a practice would switch
7 to a competitor or to cable television or
8 other television in the waiting room. So set
9 aside the factors that would cause a practice
10:52 10 to just completely have no screen in their
11 waiting room and let's talk about the reasons
12 that practices would switch to a competitor
13 or to television. Is that okay?

14 A. Yes.

15 Q. One of the reasons that you
16 mentioned was a practice not being allowed to
17 connect a waiting room system to the
18 internet. I assume they could have done it
19 by fax or dedicated phone line but there was
10:53 20 something about the switch to the internet
21 that caused them to cancel. Is that right?

22 A. Yes.

23 Q. And if a competitor was able to
24 connect via the phone line or the fax line

Melissa Lake, 3/24/2014

52

1 then they could go with that competitor, is
2 that right?

3 A. I don't remember a scenario like
4 that coming up.

5 Q. In every case that you remember,
6 that practice just cancelled and didn't
7 switch to a competitor?

8 A. Oh, yes, they switched to
9 competitor but I don't remember if -- the way
10 the competitor connected. I don't know if
11 they were able to go through the internet or
12 an analog phone line.

13 Q. The practice was telling you
14 that they were canceling the service because
15 they couldn't connect through the internet,
16 right?

17 A. Sometimes.

18 Q. And are you saying sometimes a
19 practice like that would still switch to a
20 competitor?

21 A. Yes.

22 Q. But you just don't know how the
23 competitor was providing the content.

24 A. Yes.

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Melissa Lake, 3/24/2014

53

1 Q. That's an independent reason
2 that standing alone a practice just couldn't
3 use a Healthy Advice system, right?

4 MR. BERNAY: Object to the form
5 of the question. You can answer.

6 A. Can you repeat that?

7 Q. Standing alone if a practice is
8 not able to connect their system through the
9 internet, if their -- if their policy is that
10:54 10 they can't do that, that is a sufficient
11 reason by itself that that practice would
12 cancel Healthy Advice, right?

13 MR. BERNAY: Same objection.
14 You can answer.

15 A. No. There were some cases where
16 if we couldn't connect to the internet we
17 still let them connect through an analog line
18 when I was there.

19 Q. But in other cases the practice
10:55 20 wasn't important enough to do that or --

21 A. To switch to an internet? To
22 the --

23 Q. Or switch to a -- to a phone or
24 fax line.

Melissa Lake, 3/24/2014

54

1 A. To switch from internet back to
2 a phone line?

3 Q. Or I'm sorry. To give them a
4 dedicated internet line. Is that what you're
5 saying?

6 A. Oh, we didn't -- I don't
7 remember providing a dedicated internet line.
8 I don't remember providing that.

9 Q. If a practice says I can't
10 connect my system through the internet, was
11 there a solution to that?

12 A. I believe they would still
13 connect the old way with an analog line.

14 Q. With an analog line which is fax
15 or phone, right?

16 A. Yes.

17 Q. And you said sometimes they
18 would do that. So I was just asking but
19 other times they wouldn't?

10:56 20 A. I think they were very motivated
21 to switch to an internet line but I don't
22 remember what the outcome was -- I -- I don't -- I
23 don't remember the outcome of it. This was
24 new before I left, switching the internet, so

Melissa Lake, 3/24/2014

55

1 I didn't have a lot of interaction with it.
2 So FSD had a lot, so I can't really answer
3 that question correctly.

4 Q. Thank you. So setting aside
5 that internet prohibition --

6 A. Uh-huh.

7 Q. -- if a practice was switching
8 to a competitor or to television, is one
9 reason that they gave for doing that that the
10:56 10 quality of the content was not engaging
11 enough to the patients?

12 A. Yes. That could be.

13 Q. That could be one reason?

14 A. Uh-huh.

15 Q. Another reason could be that
16 Healthy Advice's system was in a part of the
17 waiting room that wasn't working out and the
18 competitor or television could be in a
19 different part of the waiting room? I think
10:57 20 that's what you told me.

21 A. Yes. We -- we always said that
22 we could coexist with any competitor out
23 there.

24 Q. And then sometimes a practice

Melissa Lake, 3/24/2014

56

1 would let you coexist and other times the
2 practice would say, no, I only want one
3 screen or patient education system.

4 A. Yes.

5 Q. So at least in that subset of
6 practices one reason that they would switch
7 to a competitor or to a TV is that it could
8 be in a different spot in the waiting room
9 that Healthy Advice couldn't accommodate?

10:58 10 A. I would say no because if -- if
11 a competitor could put it somewhere else then
12 we could. We would make sure -- we did not
13 want to lose business so we made sure we
14 could definitely move it in a different area.
15 Whether they would let us or not, that was up
16 to them.

17 Q. Some competitors have a -- do
18 you know what loop means?

19 A. Yes.

10:58 20 Q. Loop is -- what's your
21 understanding of loop?

22 A. Usually what we had was a
23 30-minute loop for the CPU and -- and that
24 loop, that would get updated. That's what we

Melissa Lake, 3/24/2014

57

1 called a loop.

2 Q. It's the content that gets shown
3 on the screens, correct?

4 A. Correct.

5 Q. And it repeats after a certain
6 amount of time?

7 A. Correct.

8 Q. And the loop is one -- one way
9 through the content before it repeats, right?

10:59 10 A. Right. But -- go ahead.

11 Q. No. Please.

12 A. Oh, but the loop can -- there --
13 the loop -- the 30-minute loop, the next 30
14 minutes that it would change to the next
15 loop, different things would be on -- it
16 would be updated with different -- it
17 wouldn't look exactly the same.

18 Q. Some of the content would repeat
19 in the second loop --

10:59 20 A. Yes.

21 Q. -- and some of it would be
22 slightly different --

23 A. Yes.

24 Q. -- based on segments where --

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58

1 certain segments would repeat exactly as they
2 were on the first loop. Other segments would
3 kind of be substituted in in the second or
4 maybe even the third loop. Correct?

5 A. Right. There were things like
6 they had quizzes and different things like
7 that. I can't remember what they were all
8 called but just to make it more entertaining.
9 Quizzes and things like that.

11:00 10 Q. So Healthy Advice had as part of
11 its content that it relied on quizzes and
12 trivia that the patients would see, right?

13 A. There were portions of it, yes.

14 Q. And that was one way that they
15 implemented their patient education.

16 A. Yes.

17 Q. And the quizzes would
18 essentially operate by one slide showing the
19 question and then some other content coming
20 in and then another slide showing the answer
21 later?

22 A. Yeah. I can't remember if the
23 answer was the next slide or not.

24 Q. One I saw with the amount of

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59

1 fiber in raspberries, it looked like it
2 waited maybe until the end of the loop or
3 maybe even the next loop to show the answer.
4 Does that ring any bells?

5 A. No.

6 Q. Did you know raspberries have
7 more fiber than a potato?

8 A. No.

9 Q. I didn't either.

11:01 10 A. But I know you should keep
11 berries in your diet.

12 Q. But regardless the question and
13 the answer were on different slides --

14 A. Uh-huh.

15 Q. -- and there would be, you know,
16 one would display and then the other --

17 A. Yes.

18 Q. -- and then if there was other
19 content in that loop, it would be on slides
11:01 20 with different sorts of backgrounds.

21 A. Yes.

22 Q. And there might be like a photo
23 on one slide and some words that would appear
24 and then it would move on to another slide

Melissa Lake, 3/24/2014

60

1 with a different topic?

2 A. And then there were --

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. Yes. And then they would
6 personalized messages also --

7 Q. Uh-huh.

8 A. -- for the practice to update
9 and customize any way they wanted to for the
10 patients.

11 Q. And a lot of times those
12 personalized messages from the practices
13 would be a -- a different background of slide
14 with some text on it that the practice had
15 supplied to Healthy Advice for them to
16 display on the screen, right?

17 A. Yes. But they could do it
18 themselves as well.

19 Q. They could choose what messages
20 to display online?

21 A. They could pick whatever
22 message -- whatever they wanted to
23 communicate to the patient. If they weren't
24 able to do it, we could do it for them or

Melissa Lake, 3/24/2014

61

1 walk them through.

2 Q. That was part of your job was to
3 help people customize that part of the loop,
4 right?

5 A. Yes.

6 Q. Did people like that feature?

7 A. Yes.

8 Q. Was that an important reason to
9 keep a Healthy Advice screen as opposed to a
10 competitor that could not customize?

11:02

11 A. Yes.

12 Q. Did anyone ever cancel in your
13 territory because they wanted sound and
14 Healthy Advice at the time did not provide
15 sound?

16 A. I can't remember.

17 Q. Maybe, maybe not?

18 A. Yeah.

19 Q. Did anyone ever cancel in your
20 territory because they wanted more
21 live-action video and Healthy Advice at the
22 time did not provide live-action video as
23 part of their content?

11:03

24 A. It's been a while. I'm trying

Melissa Lake, 3/24/2014

62

1 to think. I don't know.

2 Q. You just don't remember one way
3 or the other?

4 A. I don't remember.

5 Q. What about the connectivity
6 problems that we were discussing earlier, did
7 you encounter practices who canceled their
8 Healthy Advice subscription because they had
9 connectivity issues?

11:04 10 A. I don't know. I don't think so.
11 I -- I don't know.

12 Q. You don't remember now?

13 A. I don't remember.

14 Q. At the time -- and this isn't a
15 pop quiz. You know don't worry. You
16 remember what you remember. So at the time
17 though one of your duties was to ask the
18 practice why they chose to cancel, right?

19 A. Yes.

11:04 20 Q. And if they were switching to a
21 competitor, was one of your duties also to
22 ask the practice why they were switching to
23 the competitor?

24 A. Yes.

Melissa Lake, 3/24/2014

63

1 Q. And you also asked which
2 competitor it was, right?

3 A. Yes.

4 Q. At that time, was it your job to
5 then put that information into CMS?

6 A. Yes.

7 Q. Your duty was to put all the
8 information about reasons for a switch into
9 CMS, right?

11:05 10 A. Whenever there's a cancel. Yes.

11 Q. You weren't supposed to leave
12 parts of it out. You were supposed to
13 provide all the reasons that the practice
14 gave for switching, right?

15 A. If they provided it, yes.

16 Q. And generally -- let me start
17 again. You didn't leave things out, right?

18 A. I hope not.

11:05 19 Q. Your intent was to put all the
20 reasons for the switch in the CMS?

21 A. Yes.

22 Q. For practices in your territory
23 that were assigned to you to do this
24 questioning, did anyone else in the company

Melissa Lake, 3/24/2014

64

1 know better than you why the practice
2 switched?

3 A. Yes.

4 Q. Who?

5 A. We had a few people that were
6 checking every day on non-connects which was
7 FSD and also Lori Smith also kept track for a
8 little while as well.

11:06

9 Q. If -- would FSD put a CMS entry
10 in for any reasons that it knew?

11 A. Yes.

12 Q. And would Lori Smith make a CMS
13 entry for each reason that she knew that a
14 practice was switching?

15 A. Yes.

11:07

16 Q. If there is no other CMS entry
17 giving reasons for a practice to switch other
18 than one of yours, would you then be the
19 person at the company who had the most
20 knowledge about why that practice switched?

21 A. Yes.

22 Q. And if for some reason someone
23 in upper management or an advertiser on
24 Healthy Advice's networks wanted to know why

Melissa Lake, 3/24/2014

65

1 a particular practice in Arizona at the time
2 that you were covering Arizona switched, they
3 would go to your CMS entries to get that
4 information, right?

5 A. I don't know. I never dealt
6 with the advertisers at all.

7 Q. But you're not aware of a better
8 source of information about the switches
9 other than the CMS entries from the employees
10 who spoke to the practice?

11:08

11 A. If a tech went out there they
12 would let us know also if they saw, you know,
13 whatever it was in their lobby. If they were
14 taking down our equipment. They would --
15 they would let us know also.

16 Q. Uh-huh. And how would they let
17 you know?

18 A. They would communicate with FSD
19 when their job is complete.

11:08

20 Q. And would FSD put that
21 information in CMS?

22 A. Yes.

23 Q. So again it's the company's best
24 knowledge that's reflected in the -- let me

Melissa Lake, 3/24/2014

66

1 start that again. Again, if the company has
2 knowledge for a switch -- just not firing
3 right.

4 A. It's Monday.

5 Q. Yeah. If Healthy Advice has any
6 information about why a practice would switch
7 to a competitor, it would be in the CMS
8 entries, right?

9 A. In my department for sure, yes.
11:09 10 Sometimes we would just get it in the mail.
11 We would just get the equipment in the mail
12 and would know.

13 Q. But that's when you don't know
14 the reason, right?

15 A. Well, we would know if our
16 equipment came back from Context -- Context
17 Media, we would know that they went to a
18 competitor.

19 Q. Right. If you found out the
11:09 20 reason for the switch, whoever found out the
21 reason for the switch would put it in CMS,
22 correct?

23 A. Yes.

24 Q. There's no other source of

Melissa Lake, 3/24/2014

67

1 information at Healthy Advice that's better
2 than CMS for the reasons practices switch to
3 a competitor.

4 MR. BERNAY: Object to the form.
5 You can answer.

6 A. Correct.

7 Q. Including switches to Context
8 Media and other competitors as well?

9 A. Correct.

11:10 10 Q. I'm going to hand you a document
11 that we're marking as Defendant's Exhibit 69.
12 (Exhibit 69 identified.)

13 Q. Do you know who Liz Phillips is?

14 A. She was in charge -- yes.

15 Q. Who was she? Thank you.

16 Appreciate that exactness. Who was Liz
17 Phillips?

18 A. She was in charge of the --
19 trying to think of the term. She was in
11:11 20 charge of the management of the content that
21 was on the flat screen. I think everything
22 from the advertiser to -- she overseen the
23 contact -- the -- she was an overseer. I --
24 I don't exactly know what -- what all her job

Melissa Lake, 3/24/2014

68

1 entailed but --

2 Q. She was pretty high up --

3 A. Yes.

4 Q. -- and it had to do with what
5 was shown on the screens in the waiting
6 rooms?

7 A. Yes.

8 Q. Did you know Linda, is it,
9 Ruschau? Ruschau?

11:11 10 A. No. But I knew her name.

11 Q. Can you tell me how to pronounce
12 it?

13 A. Ruschau.

14 Q. Ruschau?

15 A. Ruschau.

16 Q. Do you know what her position
17 was at the company?

18 A. She -- I believe she came on
19 during Patient Point and she came on when

11:12 20 I -- I'd say the last couple months that I
21 worked there from what I remember and I never
22 had a contact with her that I remember. So I
23 don't remember what her --

24 Q. Do you know who Alexis Schnell

Melissa Lake, 3/24/2014

69

1 is?

2 A. Yes.

3 Q. Who's that?

4 A. She was in sales.

5 Q. Sales is separate from customer
6 relationship management, right?

7 A. Yes. She was in sales for
8 the -- for the clients. Not the customers.

9 Q. For advertisers and sponsors?

11:12 10 A. Yes.

11 Q. Who's Tom Campbell if you know?

12 A. He was -- I don't know what his
13 position was but he was in management
14 position.

15 Q. Pretty high up?

16 A. Yes.

17 Q. Was he higher up in the chain of
18 command than Linda Ruschau? It's okay if
19 you're not sure.

11:13 20 A. I don't know.

21 Q. What's ACN?

22 A. That's the arthritis network.

23 Q. Is that smaller than the others?

24 A. Yes.

Melissa Lake, 3/24/2014

70

1 Q. There's fewer doctors in that
2 specialty, right?

3 A. Yes.

4 Q. Primary care can be any primary
5 care physician, right?

6 A. Yes.

7 Q. Whereas arthritis care is
8 limited to people who are in that field:
9 Rheumatology, arthritis and associated
10 disorders?

11:13

11 A. Yes. That specialty. Correct.

12 Q. Have you heard the word churn
13 before?

14 A. Yes.

15 Q. What's churn?

16 A. They expect cancels.

17 Q. And who's they?

18 A. Management.

19 Q. And what do you mean by expect
20 cancels?

11:14

21 A. Any time you're in sales there's
22 a churn.

23 Q. It's not even unique to -- in
24 waiting room systems. It's just in sales

Melissa Lake, 3/24/2014

71

1 there's an expected churn?

2 A. Yes.

3 Q. And here in Healthy Advice's
4 industry there's an expected churn of
5 practices, right?

6 A. From what I understand.

7 Q. And you understand that from
8 meetings with your supervisors and the team
9 and your training at Healthy Advice?

11:14 10 A. We really didn't talk about the
11 churn too much but I was aware of it.

12 Q. Are you familiar with the term
13 save?

14 A. Yes.

15 Q. What does that mean?

16 A. It's when a practice decides
17 they want to cancel and we convince them not
18 to cancel. They allow -- usually my -- I --
19 I don't remember what I was gonna say.

11:15 20 Q. Okay. Usually when a practice
21 calls to cancel, were you gonna say --

22 A. When they call to cancel and I
23 convince them not to cancel, you cancel the
24 cancel request as a save and that's what we

Melissa Lake, 3/24/2014

72

1 call it.

2 Q. The cancel of the cancel --

3 A. Right.

4 Q. -- is the save?

5 A. Right. The cancel of the cancel
6 is the save.

7 Q. Is that reflected in CMS?

8 A. Yes.

9 Q. Is there a separate field that's
10 like cancel and then cancel the cancel?

11 A. When you're -- when you have
12 that order, you either -- with a cancel you
13 either send it on to management or you save
14 it, so you cancel the cancel with a save, and
15 you would just put in a save and put how you
16 saved them and --

17 Q. So there's a separate save
18 field?

19 A. Only if it's a cancel you'll see
20 where -- from what I remember, you would see
21 where you could either send it on or cancel
22 that cancel and the re -- and it'll -- and
23 you just click on something the reason you
24 canceled it was a save. Is best I can

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73

1 explain it I guess without looking at it.

2 Q. There's -- there's a choice --
3 after you click to cancel the cancel, there's
4 a choice of, you know, why you're doing it or
5 what you're -- is there an opportunity to
6 comment --

7 A. Yeah.

8 Q. -- or is -- or is it a pick list
9 or both?

11:16 10 A. There's always a place for you
11 to put a comment in.

12 Q. Is there also a list of choices
13 to click?

14 A. I can't remember.

15 Q. Okay.

16 A. I'd have to look at it.

17 Q. So anyway, when there's a cancel
18 and then you order in CMS it would pop up on
19 your task list. Right?

11:17 20 A. And you would work that order.

21 Q. And you'd work the order by
22 calling the contact at the practice?

23 A. Uh-huh.

24 Q. You'd talk to them about it.

Melissa Lake, 3/24/2014

74

1 You'd do your best to understand why they're
2 canceling, right?

3 A. Yes.

4 Q. And if they chose to continue
5 the cancel, to actually go through with it,
6 you'd schedule the cancel and you put your
7 best information in CMS for why they were
8 switching?

9 A. Yes.

11:17 10 Q. If they chose after talking to
11 you to keep the system in the waiting room,
12 to keep Healthy Advice --

13 A. Uh-huh.

14 Q. -- going, then you would click
15 something to cancel the cancel, right?

16 A. Right.

17 Q. And at that point a new screen
18 or like little window would pop up, correct?

19 A. I can't remember what pops up.

11:17 20 Q. Uh-huh.

21 A. I just remember that --

22 Q. But something pops up, right?

23 A. Something would come up in the
24 cancel request where you can pick --

Melissa Lake, 3/24/2014

75

1 Q. Save.

2 A. -- save I believe. Yeah. From
3 what I remember. It's been a while. From
4 what I remember. Those were my favorite
5 orders.

6 Q. Because then you feel like
7 you're winning, right?

8 A. Right. Well, I like sales so --

9 Q. Oh, very good. Now, there's a
11:18 10 separate department that's sales at Healthy
11 Advice, right?

12 A. Yes.

13 Q. And would you consider their
14 work important in terms of getting practices
15 to sign onto Healthy Advice's networks?

16 A. Very important.

17 Q. And would you also consider the
18 customer relationship management team's
19 efforts to keep the practices engaged to be
11:18 20 important to retaining practices in the
21 networks?

22 A. Yes.

23 Q. Is one of those more important
24 than the other?

Melissa Lake, 3/24/2014

76

1 A. They're both very important.

2 Q. Is there any basis to think one
3 is more important to the total number of
4 practices that Healthy Advice is able to have
5 in any particular network?

6 MR. BERNAY: Object to the form.
7 You can answer.

8 A. While it's important to sell it,
9 it's very important to manage it to keep them
10 happy and engaged.

11 Q. So there's really not a way to
12 compare the two. They're just both very
13 important?

14 A. Right.

15 Q. And that's the sales team and
16 the customer relationship team and all the
17 activities they undertake. Separately from
18 that there's the product, right?

19 A. Yes.

11:19 20 Q. And if what Healthy Advice was
21 selling was just like a screen that displayed
22 puce walls, no matter how good the sales team
23 and the customer relationship team were, they
24 couldn't sell that product, right? The

Melissa Lake, 3/24/2014

77

1 product's important is what I'm trying to
2 say.

3 A. The product is important. Yes.

4 Q. And the product's quality is
5 separate from what the sales activities are
6 and what customer relationship management's
7 activities are?

8 A. Can you repeat the first part of
9 the question?

11:20 10 Q. Sure. The product which we
11 agree is important to the practices --

12 A. Uh-huh.

13 Q. -- is separate from -- it's a
14 separate kind of thing from the activities of
15 the salespeople and the activities of the
16 customer relationship management team.

17 A. Yes.

18 Q. And each of those three could
19 potentially be why a particular practice is
11:20 20 in a network, correct?

21 A. Yes.

22 Q. Exceptional sales could be a
23 reason that a practice is in a Healthy Advice
24 Network, correct?

Melissa Lake, 3/24/2014

78

1 A. Yes.

2 Q. And exceptional customer
3 relationship activities could be a reason
4 that that practice is in that network at a
5 particular time, right?

6 A. Yes.

7 Q. And good quality programming
8 could also be a reason that a particular
9 practice is in a network at a particular
10 time, right?

11:21

11 A. Yes.

12 Q. On the flip side, if the sales
13 team does a poor job of selling, that could
14 be a reason that they missed a practice, that
15 a practice is not in a Healthy Advice Network
16 at a particular time, right?

17 A. Yes.

18 Q. And if somebody on your team,
19 the customer relationship management team,
20 did a poor job of engaging the practice for
21 whatever reason, that could be a reason that
22 a practice got lost, cancelled, and therefore
23 is not in that network at a particular time,
24 right?

11:21

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79

1 A. Yes.

2 Q. And if the content in the view
3 of the practice is no good, for whatever
4 reason, that could be a reason independent of
5 the other two that that practice is not in a
6 Healthy Advice Network at a particular time,
7 right?

8 A. Yes.

9 Q. Now, separately from those three
10 there's also the technical issues, right?
11 Because you've got your product which has a
12 certain quality --

13 A. Uh-huh.

14 Q. -- but if the practice -- if the
15 practice's patients can't see it because the
16 screen goes bank or it's fizzy or whatever
17 the technical issues might be, that's yet a
18 fourth independent reason that any particular
19 practice might be in or out of a network at a
20 particular time, right?

21 MR. BERNAY: Object to the form.
22 You can answer.

23 A. Yes.

24 Q. The -- and a bad experience in

Melissa Lake, 3/24/2014

80

1 any one of those four for any particular
2 practice could cause a cancel by itself,
3 right?

4 MR. BERNAY: Objection. You can
5 answer.

6 A. Yes.

7 Q. And in your experience that's
8 probably happened where a practice has one of
9 those that really was an overriding factor
10 and you couldn't save it because one of those
11 four was lacking in the past, right?

12 A. Yes.

13 Q. Would you have any way to
14 compare or rate which of those four factors
15 are more or less important than the other in
16 having a practice in a network at a
17 particular time?

18 MR. BERNAY: Objection. You can
19 answer.

20 A. They're all important. I can't
21 remember like --

22 Q. What can't you remember?

23 A. The -- one of the four reasons
24 why --

Melissa Lake, 3/24/2014

81

1 Q. Oh, sure.

2 A. -- they would cancel.

3 Q. We were just talking about the
4 sales activities; the customer relationship
5 management team activities; the programming,
6 the product; and then technical issues
7 whether it works flawlessly or whether there
8 are problems with connectivity that make it
9 not work properly.

11:24 10 A. You know, there -- there were
11 all sorts of different reasons and there
12 wasn't one particular reason each time. I
13 didn't see a trend of it. It was --

14 Q. Any particular cancel could be
15 any one of those or a combination?

16 A. Or a competitor coming in.

17 Q. Uh-huh.

18 A. Yes.

19 Q. And so a competitor coming in
11:24 20 you're thinking is sort of a fifth category,
21 right?

22 A. Yes.

23 Q. And if a competitor comes in and
24 has sales activities that are very effective

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82

1 that could be yet a fifth reason that a
2 practice is either in or not in a Healthy
3 Advice Network at a particular time, right?

4 A. Yes.

5 Q. Did you receive scripts as part
6 of your training or instructions?

7 A. Not -- we were coached but I
8 can't -- I can't remember if there was an
9 exact script. We didn't -- if there was, we
10 didn't have to like follow it word by word or
11 anything like that.

12 Q. Did you have a binder?

13 A. Yes.

14 Q. Was there a binder -- did you
15 have three binders?

16 A. One -- yes.

17 Q. Was one related to in waiting
18 room systems?

19 A. Yes.

20 Q. Did that binder have
21 instructions in it about interactions with
22 practices?

23 A. I don't remember.

24 Q. Do you remember if there were

Melissa Lake, 3/24/2014

83

1 scripts in there?

2 A. I want to say yes but --

3 Q. You want to say it because you
4 think so?

5 A. I think so.

6 Q. But you're not sure?

7 A. I think so. But I'm not 100
8 percent sure.

9 Q. Uh-huh.

11:26 10 A. It was a very well made binder.

11 Q. It covered a lot of the issues
12 that came up in your job?

13 A. Yes.

14 Q. Would you refer to that binder
15 if you were having an issue and you weren't
16 sure exactly how to handle it with the
17 practice?

18 A. Yes.

11:26 19 Q. Do you remember anything else
20 about the binder, what was in it?

21 A. I -- I remember trouble --
22 different ways to troubleshoot if you were on
23 the phone with a practice for -- we had
24 different sized flat screens so --

Melissa Lake, 3/24/2014

84

1 Q. Uh-huh.

2 A. -- there were different ways to
3 troubleshoot for each flat screen.

4 Q. That's an interesting point.
5 The size of the TV is important to some
6 practices, right?

7 A. Uh-huh.

11:27

8 Q. And the CPU -- do you think the
9 CPU kind of being in the way or the size or
10 placement of it is important or should we
11 just ignore that?

12 A. Ignore that because it's -- it's
13 behind the --

14 Q. It's hidden in the wall?

15 A. It -- it's actually connected to
16 the back of the flat screen. It's very
17 small.

18 Q. Well, the new CPU is very small,
19 right?

11:27

20 A. Yeah.

21 Q. There was an old one that was
22 larger?

23 A. I -- I remember we -- we were
24 phasing those out and providing new ones from

Melissa Lake, 3/24/2014

85

1 what I remember.

2 Q. During the time from the fall of
3 2009 to March of 2013 were you phasing out
4 old CPUs that whole time?

5 A. Yes.

6 Q. As it came up?

7 A. Yes.

8 Q. If the practice had an old CPU,
9 it might be replaced?

11:28 10 A. Especially if it wasn't working
11 correctly, yes.

12 Q. Was there an employee at Healthy
13 Advice called -- named Vida Albert?

14 A. Yes.

15 Q. Albert or Alberts?

16 A. Albert.

17 Q. Albert. Vida Albert?

18 A. Yes.

11:28 19 Q. Did she have something to do
20 with the replacement of CPUs?

21 A. Yes.

22 Q. What was her role in that?

23 A. She would -- she would order
24 them --

Melissa Lake, 3/24/2014

86

1 Q. Uh-huh.

2 A. -- if it needs to be replaced.

3 Q. And what happens to the old
4 CPUs?

5 A. They get -- well, usually they
6 would be -- they would be sent back to us.

7 Q. In every case?

8 A. I'm not in the field digital
9 department but from what I understand they
10 were sent back to us.

11:29

11 Q. It just sounds like -- did you
12 ever have a experience where the old CPU was
13 left with the practice or was that somebody
14 else's job?

15 A. If it was left it was an
16 accident.

17 Q. Why do you say that?

18 A. I don't think they wanted to
19 leave that equipment there.

11:29

20 Q. The old CPUs -- at one point
21 didn't Vida send out a list of what kind of
22 equipment was needed back from a practice and
23 what kind of equipment could be left with a
24 practice?

Melissa Lake, 3/24/2014

87

1 A. Possibly. I don't remember.

2 Q. If Ms. Joyce Lawrence told me
3 that there was a list like that, would you
4 have any reason to disagree with her?

5 A. No.

6 MR. BERNAY: Objection. You can
7 answer.

8 A. No. I would have no reason to
9 disagree with her.

11:30 10 Q. Was she -- you said you sat
11 right across from her?

12 A. For a while. Yeah.

13 Q. Was she good at her job?

14 A. Yes.

15 Q. Was she knowledgeable of Healthy
16 Advice's policies and procedures?

17 A. Yes.

18 Q. It looks like you want to say
19 she was very knowledgeable. Can you tell me
11:30 20 a little bit about Ms. Lawrence and her work?

21 MR. BERNAY: Objection. You can
22 answer.

23 A. She never got up from her desk.
24 I would make her go to lunch. She worked

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88

1 very hard. She was a very -- she's a very
2 good employee. I would make her get up. Did
3 you eat? Did you drink something today?
4 Please get up from your desk. Let's walk
5 somewhere.

6 Q. Extremely dedicated.

7 A. Very much.

8 Q. If you had a question about what
9 to do with a particular situation that was
10 arising, would you sometimes ask
11 Ms. Lawrence?

12 A. Yes.

13 Q. She was a good resource for that
14 type of information?

15 A. Yes. But I could ask my
16 supervisor first.

17 Q. Uh-huh.

18 A. If she wasn't around, I would
19 ask her.

20 Q. And would you trust the
21 information that Ms. Lawrence gave you about
22 Healthy Advice's practices and procedures?

23 A. Yes.

24 Q. Did you ever have a situation

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89

1 where she was wrong in any sort of important
2 way?

3 A. Not that I know of.

4 Q. Very dedicated, very
5 knowledgeable employee?

6 A. Yes.

7 Q. As far as CPUs of the old
8 variety and whether or not they were left at
9 a practice in certain situations, you don't
10 have direct knowledge after that, correct?

11 A. No.

12 Q. You're saying that decisions
13 about that were made by digital and Vida
14 Alberts, right?

15 A. Yes.

16 Q. And if they made decisions about
17 that, it would be reflected in a CMS entry,
18 correct?

19 A. Yes.

20 Q. So there's no reason for me to
21 pop quiz you about it, right?

22 A. I think so.

23 Q. So going back to the size of the
24 TV screens, was that important to some

Melissa Lake, 3/24/2014

90

1 practices?

2 A. Yes.

3 Q. Healthy Advice had screens that
4 were available in certain sizes at certain
5 times, right?

6 A. Yes.

7 Q. And sometimes would a practice
8 want a larger screen?

9 A. Yes.

11:32 10 Q. Would certain practices switch
11 to a competitor and say that the reason was
12 to get a larger screen?

13 A. I have a hard time answering
14 that because if a practice was requesting a
15 flat screen, a larger flat screen, I would
16 make sure I was able to provide that.

17 Q. Oh, there are two sizes and
18 sometimes they had the small and wanted the
19 large?

11:32 20 A. Right. And if they wanted -- if
21 they wanted a larger screen I would find out
22 if we were able to provide that.

23 Q. Uh-huh. And you don't remember
24 the result of any particular situation where

Melissa Lake, 3/24/2014

91

1 that arose?

2 A. I have never -- I never had a
3 practice that I remember canceling because of
4 the size of the flat screen, meaning we
5 weren't able to upgrade them if they needed
6 to. We were -- that's all I know about
7 the --

8 Q. Uh-huh.

11:33

9 A. We did upgrade if they were
10 requesting.

11 Q. Could you look at paragraph --
12 the numbered paragraph two in Defendant's
13 Exhibit 69?

14 A. Uh-huh.

11:34

15 Q. The last part of that paragraph
16 says, in addition, reps will be equipped with
17 a script that explains that there's a
18 competitor in the marketplace that is
19 misrepresenting themselves and that no
20 authorization has been given to any other
21 company to remove HAN equipment. Do you
22 remember any such script?

23 A. I do remember this.

24 Q. What was it?

Melissa Lake, 3/24/2014

92

1 A. I don't remember the exact
2 script but I do remember if we had -- if we
3 had a practice deciding they wanted to cancel
4 and they told us that it's already been taken
5 down by a competitor, they have a -- they
6 were provided a -- thinking of the word.
7 They had a contract when they joined us.

8 Q. Enrollment?

9 A. Enrollment agreement. And in
11:35 10 the enrollment agreement it said that only
11 Healthy Advice was permitted -- was allowed
12 to take down the equipment meaning our techs
13 and nobody else was required to do that and
14 we needed a 30- or 60-day notice and we
15 would -- we would take it down and cancel
16 them within that 30 or -- to 60-day notice
17 depending on their enrollment.

18 Q. And every time that situation
19 arose you would inform the practice of that,
11:35 20 correct?

21 A. When they wanted to cancel, yes.

22 Q. And do you have any reason to
23 believe that the practice was confused about
24 that after you spoke to them?

Melissa Lake, 3/24/2014

93

1 A. No.

2 Q. And if you -- if they did seem
3 confused you would have followed up and
4 explained it further, right?

5 A. Yes.

6 Q. So by the time you were done you
7 had conveyed that full message to each
8 practice.

9 A. Yes.

11:36 10 Q. Was that according to the script
11 and instructions that you were given?

12 A. Yes.

13 MR. BERNAY: Objection. You can
14 answer.

15 A. Yes.

16 Q. And that's -- those -- that
17 script and those instructions were given to
18 the whole customer relationship management
19 team, right?

11:36 20 MR. BERNAY: Objection. You can
21 answer.

22 A. Yes.

23 Q. Look at paragraph three. It
24 says, in addition to this personal outreach,

Melissa Lake, 3/24/2014

94

1 we are sending a formal letter to all ACN
2 practices with similar language around
3 misrepresentation and authorization. Do you
4 have any memory of that letter?

5 A. I don't.

6 Q. Do you have any memory of
7 speaking with a practice at any point that
8 mentioned that letter at all?

9 A. I don't remember.

11:36 10 Q. In the script about a company in
11 the marketplace misrepresenting themselves
12 what specifically was said about that?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 A. I think that they told them it
16 was okay for them to take the equipment down
17 and they would take care of it and ship it
18 out to us and I think that was a
19 misrepresentation -- that was misrepresenting
11:37 20 what our enrollment agreement said.

21 Q. That was what the script said?

22 A. I don't remember the script. I
23 remember there was one but I don't remember
24 what it said.

Melissa Lake, 3/24/2014

95

1 Q. You remember generally that the
2 issue had to do with taking down the
3 equipment and whether someone was authorized
4 to do that?

5 A. Correct.

6 Q. Do you know if that was specific
7 to Context Media or if it was other
8 competitors as well?

9 A. I don't remember another
11:38 10 competitor doing that, sending it back to us.
11 I only remember Context Media doing that.
12 The diabetic network and the arthritis
13 network they had.

14 Q. Rheumatology?

15 A. Rheumatology. Yes.

16 Q. Did Healthy Advice ever take any
17 action against a practice for taking the
18 equipment down itself?

19 A. No. Not that I know of.

11:38 20 Q. That would have been contrary to
21 its customer service model, right?

22 A. I would say so.

23 Q. It would be offensive to the
24 practice?

Melissa Lake, 3/24/2014

96

1 A. Yes.

2 Q. And so in a situation where the
3 name of the game is getting screens up in
4 doctor's offices, Healthy Advice would not
5 want it to become known that it ever sued a
6 practice, right?

7 A. I don't think so.

8 Q. That would be bad.

9 A. I just -- I don't think that's a
11:39 10 good place to talk about -- doctor's offices
11 about suing with all the malpractices out
12 there, I don't --

13 Q. Doctors can be touchy about
14 lawsuits, right?

15 A. I'm sure. Yes.

16 Q. And so although there was an
17 enrollment form that talked about practice
18 switch outs, doctor's offices didn't have
19 that enforced against them, correct?

11:39 20 A. I don't know.

21 Q. You never encountered one that
22 was enforced against a practice, right?

23 A. That a lawsuit was enforced
24 against a practice? No.

Melissa Lake, 3/24/2014

97

1 Q. Or that a practice was charged
2 money for the equipment being taken down.

3 A. No.

4 Q. And you dealt with hundreds of
5 practices every month during your time at
6 Healthy Advice, right?

7 A. Yes.

8 Q. And if it was in your territory
9 you would have known if that kind of
10 situation arose, right?

11 A. Yes.

12 Q. The policy of Healthy Advice was
13 to tell the practice that it needed to make
14 sure that the equipment got sent back and was
15 appropriately packed, right?

16 A. If they told us it was taken
17 down by a competitor?

18 Q. Yes.

19 A. I can't remember having that
20 conversation of making sure it was packed up
21 correctly. If I did, I -- I would say that
22 but I can't remember.

23 Q. Do you ever remember getting
24 instructions about that situation about what

Melissa Lake, 3/24/2014

98

1 to say?

2 A. No. I can't remember that.

3 Q. Did you ever deal with -- did
4 the script about -- that's referenced in
5 number two of Defendant's Exhibit 69 refer to
6 a specific competitor?

7 A. I don't know. I -- I know that
8 there was only one competitor that I was
9 aware of that was sending it back.

11:41 10 Q. Did you -- did a practice that
11 you spoke to ever get angry at the competitor
12 after you spoke to them about these issues?

13 A. Not that I know of. I don't
14 remember.

15 Q. I'd like to hand you what we are
16 marking as Defendant's Exhibit 70.

17 (Exhibit 70 identified.)

18 Q. Is this an e-mail from Lori
19 Smith to Kelly Schulkers, you and Heather
11:42 20 McGauvran dated September 23rd, 2011?

21 A. I'm sorry. Did you want me to
22 read this?

23 Q. Sure.

24 A. Okay.

Melissa Lake, 3/24/2014

99

1 MR. BERNAY: Take your time go
2 through the document.

3 A. Okay. It's 2011 so I'm trying
4 to remember this. Okay. I remember Phyllis.

5 VIDEOGRAPHER: While she's
6 reviewing, I'm gonna take the opportunity to
7 change DVDs. Going off the video record at
8 11:42 a.m.

9 (Off the record discussion.)

11:44 10 VIDEOGRAPHER: Okay. We are
11 back on the record at 11:44 a.m.

12 Q. I'll ask the question again. Is
13 this an e-mail from Lori Smith to Kelly
14 Schulkers, you, and Heather McGauvran dated
15 September 23rd, 2011?

16 A. Yes.

17 Q. Lori Smith is a member of the
18 customer relationship management team, right?

19 A. Yes.

11:45 20 Q. And at this time so was Heather
21 McGauvran?

22 A. Yes.

23 Q. And you were a member of that
24 team, right?

Melissa Lake, 3/24/2014

100

1 A. Yes.

2 Q. Who's Kelly Schulkers?

3 A. She was in FSS, field sales
4 service.

5 Q. Is that the sales team that we
6 were discussing previously?

7 A. Yes.

8 Q. And who's Phyllis?

9 A. She was an -- she was an FS as
10 well out in California.

11 Q. Did Phyllis go out to practices
12 in person?

13 A. Yes.

14 Q. Were there specialized members
15 of FSS that did that and then there were
16 others who worked the phones?

17 A. FSS was field service sales so
18 they were out in the field and I was in the
19 office answering phones, trying to save them,
20 but it helped out a lot if they went and
21 visited a practice.

22 Q. Is there a separate sales team
23 or department that operated mostly by phone?

24 A. I don't know how they operated.

Melissa Lake, 3/24/2014

101

1 If they would just -- they -- they -- they're
2 instructed to visit a practice.

3 Q. And this is in California?

4 A. Uh-huh.

5 Q. Right? Do you remember Dr.
6 Sandler?

7 A. No, I don't.

8 Q. The part of this e-mail that
9 appears below comment type, is that a CMS
10 entry?

11:47

11 A. I believe so only because the --
12 it says comment type here so it is because
13 that was one of the comments that went in
14 under an order that was at this location
15 3744754. So, yes, it was in CMS.

16 Q. That number that you just said
17 is a unique location ID number and every
18 practice has its own, right?

19 A. Yes.

11:48

20 Q. And that number's used by CMS to
21 track all the different practices, right?

22 A. Yes.

23 Q. And there must have been some
24 sort of option for you to be able to send an

Melissa Lake, 3/24/2014

102

1 e-mail that had a CMS field entry in it
2 because that's what we're looking at, right?

3 A. Yes. Yes.

4 Q. Would you start that in CMS and
5 then click something to e-mail the entry?

6 A. Yes.

7 Q. So when we see a CMS entry or an
8 e-mail that has one that looks like this --

9 A. Uh-huh.

11:48 10 Q. -- those are documents that are
11 generated in the ordinary course of your job,
12 right?

13 A. Yes.

14 Q. And they're kept by Healthy
15 Advice in its ordinary business, correct?

16 A. Yes.

17 Q. It appears from the CMS entry
18 that the practice had some connection issues?

19 A. Yes.

11:49 20 Q. When you wrote a CMS entry --
21 pardon me. It appears that this CMS entry
22 was -- was entered by Lori Smith, right?

23 A. Yes.

24 Q. Do you know why that was even

Melissa Lake, 3/24/2014

103

1 though it was in your territory?

2 A. Lori ended up taking over the
3 California location, so I'm not sure if this
4 was -- we were still in -- in transition of
5 switching territories because she got it
6 after me or if this was the time she was
7 checking on everything with the ACN
8 locations. I -- I don't know.

9 Q. What's that second time that
11:50 10 you're referring to when she was checking on
11 everything with the ACN location?

12 A. Lori would keep track of
13 non-connects for ACNs as well as digital had
14 it but just for our -- just so everyone was
15 in the know about the ACN non-connects.

16 Q. Whenever there was a non-connect
17 in the ACN network Lori Smith would call the
18 practice?

19 A. She would not necessarily call
11:50 20 them. It would be handled -- from what I
21 remember, it would be -- she would just be
22 keeping track of it but we were working it,
23 so -- sometimes it -- she would call if it
24 was her -- if it was something she was

Melissa Lake, 3/24/2014

104

1 working on, yes, but I really can't remember
2 if she called on the ACNs. I don't remember.

3 Q. She spoke to this one.

4 A. And I don't know if it was
5 because it was her territory at the time --

6 Q. Well, the -- up above it says --

7 A. -- and I was still involved in
8 it. Okay.

9 Q. You'll see it says Melissa just
10 an FYI --

11 A. Okay.

12 Q. -- since this is in your
13 territory.

14 A. Okay. Okay. That's right.

15 Q. So she wouldn't have said that
16 if it was the transition issue, right?

17 A. No. I just can't remember if we
18 held onto a few orders until it was over
19 but --

20 Q. Uh.

21 A. -- but she kept track of the
22 ACNs definitely. Non-connects. She had a
23 spreadsheet I think.

24 Q. If Lori Smith was entering

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Melissa Lake, 3/24/2014

105

1 information about the reason that a practice
2 switched, then she's the person who was in
3 communication with the practice about those
4 issues, right?

5 A. I believe so. With this issue
6 here, from what I'm looking at, they just
7 went ahead and sent a field sales -- field
8 sales department or field sales
9 representative to that location for a
10 followup.

11:52

11 Q. I'd like to hand you what we are
12 marking at Defendant's Exhibit 71.

13 (Exhibit 71 identified.)

14 Q. This has a front and a back if
15 you would look it over, please.

16 MR. BERNAY: This may have been
17 introduced already, Tom. I just -- I just
18 don't remember.

11:53

19 MR. HANKINSON: In which case I
20 just marked it twice. Sorry.

21 MR. BERNAY: That's fine.

22 MR. HANKINSON: Let me know when
23 you've had a chance to look it over.

24 A. Okay.

Melissa Lake, 3/24/2014

106

1 Q. The very bottom of this e-mail
2 chain --

3 A. Uh-huh.

4 Q. -- is there an e-mail from you
5 to Lori Smith and Heather McGauvran?

6 A. Yes.

7 Q. That's dated September 20th,
8 2011, right?

9 A. Yes.

11:55 10 Q. And it's about Dr. Lorilee
11 Sutter in Modesto, California?

12 A. Yes.

13 Q. Do you remember Ms Sutter's --
14 Dr. Sutter's office?

15 A. No.

16 Q. Do you remember who Kari is?

17 A. No. I believe she's the POC.

18 Q. What's POC?

19 A. Point of contact.

11:55 20 Q. Each practice has a primary
21 point of contact?

22 A. Yes.

23 Q. That information is reflected in
24 CMS?

Melissa Lake, 3/24/2014

107

1 A. Yes.

2 Q. Did you have a chance to look
3 over the CMS entry that's at the bottom of
4 Defendant's Exhibit 71?

5 A. Yes.

6 Q. Is this an entry that you wrote?

7 A. Yes.

8 Q. The point of contact at this
9 doctor's office gives a couple different

11:56 10 reasons for switching to RHN, correct?

11 A. Yes.

12 Q. RHN is one of the networks made
13 by Context Media, right?

14 A. Yes.

15 Q. According to this entry that you
16 made, the point of contact at this practice
17 felt that RHN was more geared toward
18 arthritis, right?

19 A. Yes.

11:56 20 Q. And it also says here that the
21 point of contact said that RHN has more
22 video, right?

23 A. Yes.

24 Q. And in September of 2011,

Melissa Lake, 3/24/2014

108

1 Healthy Advice had essentially no live-action
2 video in its content, correct?

3 A. I don't remember the dates. I
4 know when I left they had live video. I -- I
5 can't remember the dates when they started
6 getting live video.

7 Q. In any event, the point of
8 contact for this practice said that RHN had
9 more video, correct?

11:57 10 A. Yes.

11 Q. Or rather that it is more video.
12 It's more video. Right?

13 A. Yes.

14 Q. Oh, and it says that you
15 informed her of the upcoming changes we will
16 have. Does that refresh your memory at all
17 about the timing of this and whether Healthy
18 Advice had video at that time or was just
19 planning to?

11:57 20 A. If I told her that we were
21 having video then, yes, we were having video
22 at that time.

23 Q. Do you remember if that's what
24 the upcoming changes refers to?

Melissa Lake, 3/24/2014

109

1 A. Yes.

2 Q. So if you said this, your
3 conclusion was -- if you -- so you did say
4 this, right?

5 A. Yes.

6 Q. And what you're saying is that
7 leads you to conclude that Healthy Advice did
8 not have video at that time but was planning
9 to, right?

11:58 10 MR. BERNAY: Objection. You can
11 answer.

12 Q. If you said this, it was at a
13 time when you were planning to have video.

14 MR. BERNAY: Objection. You can
15 answer.

16 A. Yes, it was -- it had to be.
17 Yes.

18 Q. You told this point of contact
19 at the practice to go ahead and compare
11:58 20 Healthy Advice's programming with RHN, if --
21 if RHN's screen was up before Healthy
22 Advice's was de-installed, right?

23 A. Correct.

24 Q. And you mentioned earlier that

Melissa Lake, 3/24/2014

110

1 are you always informed practices that were
2 switching to competitors that Healthy Advice
3 was happy to coexist with a competitor,
4 right?

5 A. Correct.

6 Q. And that's because Healthy
7 Advice stands behind its programming, right?

8 A. Correct.

9 Q. And feels that if the
11:59 10 competitor's programming and its programming
11 are viewed side by side that would result in
12 at least some practices keeping Healthy
13 Advice over a competitor or at least
14 alongside a competitor, right?

15 A. Yes.

16 Q. And the people in the doctor's
17 offices that make these decisions have a
18 Healthy Advice screen already, right?

19 A. Yes.

11:59 20 Q. They're familiar with the
21 content?

22 A. Yes.

23 Q. They know what the loops are.

24 A. If they are -- a lot of times --

Melissa Lake, 3/24/2014

111

1 I don't know how much they're in the waiting
2 area to watch them but they should know
3 what's out there. It's up to them to make
4 sure they know.

5 Q. In any event they can go check
6 if they have a question about what the
7 content is.

8 A. Yes.

12:00

9 Q. And at least a fair number of
10 them give you feedback about the content so
11 you know that those have viewed it, right?

12 A. Yes.

13 Q. It appears from this entry that
14 the point of contact at this practice knew
15 that RHN was a competitor of Healthy Advice,
16 right?

17 A. Yes.

12:00

18 Q. There wasn't any confusion about
19 who RHN was and whether it was some sort of
20 subsidiary or it was related to Healthy
21 Advice. They knew it was a separate
22 competitor?

23 A. Yes.

24 Q. And that was the case with all

Melissa Lake, 3/24/2014

112

1 the practices that you dealt with. They --
2 if they were switching to a competitor, they
3 didn't think it was some sort of upgrade,
4 right? They knew it was a different system?

5 A. From what I understand, yes.

6 Q. And it says that you informed
7 this practice that they're not allowed to
8 touch the system, correct?

9 A. Uh-huh.

12:01 10 Q. Do you have any reason to
11 believe that that is not clear when you tell
12 a practice that?

13 A. No.

14 Q. You think, you know, if the
15 system hasn't been taken down yet and you
16 tell the practice they're not allowed to
17 touch it or let RHN touch it, that that
18 clears up the situation?

12:01 19 A. Unless they're not listening to
20 me or looking at the enrollment agreement. I
21 know they have a million things going on in
22 their office besides what's going on in their
23 lobby.

24 Q. But as you're telling them that,

Melissa Lake, 3/24/2014

113

1 your intention is to be understood, right?

2 A. Yes.

3 Q. And if you weren't understood
4 you would have followed up to make sure that
5 you were understood, correct?

6 A. Yes.

7 Q. And you experience hundreds of
8 calls with practices every month, right?

9 A. Yes.

12:02 10 Q. And you think that you have a
11 good feel for whether you're being understood
12 or whether you need to clarify some more
13 before you hang up?

14 A. No.

15 Q. Not necessarily?

16 A. I don't feel like they -- I feel
17 like they under -- I repeated it. I feel
18 like they understood that they're not allowed
19 to take it down.

12:02 20 Q. And my question was a little bit
21 different.

22 A. Oh, okay.

23 Q. I was asking in all those calls
24 in all the experience that you've had, do you

Melissa Lake, 3/24/2014

114

1 feel like you've developed a good
2 understanding of when a practice understands
3 you versus when you need to follow up a
4 little bit more to make your point?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. It's hard for me to say if -- if
8 I know if they understood what I said or if
9 they were listening to me. I hope they did.

12:03 10 Q. And that was your intent.

11 A. Yes.

12 Q. Did you know in 2011 whether or
13 not RHN's enrollment form permitted it to
14 coexist with a competitor or not?

15 A. I don't.

16 Q. Did you think to check whether
17 there was any promise in that enrollment form
18 not to have RHN up with another competitor's
19 screen?

12:04 20 A. No.

21 Q. And that's because the practice
22 wouldn't normally be held responsible for
23 that kind of situation, correct?

24 A. Correct.

Melissa Lake, 3/24/2014

115

1 Q. Because in this field the
2 enrollment forms aren't really enforced
3 against the practice whether they're Context
4 Media's or Healthy Advice's, right?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. I don't know what Context Media
8 enrollments forms were at all. I don't know
9 if they were allowed to have competitors. I
10 know we were and that's all I was worried
11 about.

12 Q. You weren't worried about what
13 was in the competitor's enrollment form,
14 correct?

15 A. Not since we were there first.

16 Q. You were never instructed to
17 look at RHN's enrollment form, right?

18 A. No.

19 Q. Your supervisors were okay with
20 you making statements about coexisting
21 without looking at competitor's enrollment
22 forms, right?

23 MR. BERNAY: Object to the form.
24 You can answer.

Melissa Lake, 3/24/2014

116

1 A. I don't know. I don't remember.
2 Let's see. I don't remember. I -- I'm
3 sorry.

4 Q. In any individual case when
5 you're talking to a practice, you didn't know
6 what the competitor's enrollment forms said,
7 right?

8 A. Right.

12:05

9 Q. And you wouldn't -- your -- you
10 weren't expected to know that, correct?

11 A. No.

12 Q. Your supervisors didn't expect,
13 you know, you to go look up the competitor's
14 enrollment forms?

15 A. No.

16 Q. And the competitor's enrollment
17 forms weren't distributed to you, correct?

18 A. I don't remember.

19 Q. You never remember seeing one?

12:06

20 A. No.

21 Q. But you were instructed to tell
22 practices that Healthy Advice can coexist
23 with a competitor's screen, right?

24 A. Yes.

Melissa Lake, 3/24/2014

117

1 Q. And that was based on Healthy
2 Advice's policies?

3 A. Yes.

4 Q. Did a -- did a practice ever
5 describe Healthy Advice's content as slides
6 to you?

7 A. I think in the personalized
8 message slides, yes, because there were 26
9 slides, I believe. The number could have
10 changed or been a little bit different but
11 there were -- there were several slides that
12 we slide -- you know, so when we were helping
13 them with their messages --

14 Q. Uh-huh.

15 A. -- we would indicate which slide
16 for which message.

17 Q. Did the points of contact for
18 practices ever describe Healthy Advice's
19 content as boring?

20 A. I'm sure I had that before.
21 Yes.

22 Q. Did they ever describe a
23 competitor's offering as somehow more
24 engaging or more exciting?

Melissa Lake, 3/24/2014

118

1 A. Yes.

2 Q. Did the practices that you spoke
3 to ever describe Healthy Advice's content as
4 essentially like a Power Point?

5 A. I didn't come across it much but
6 every once in a great while, yes.

7 Q. A practice would say that the
8 Healthy Advice waiting room content looked
9 like a Power Point presentation every once in
10 a while?

12:08

11 A. Very --

12 Q. Every once in a great while.

13 A. Very rarely but yes.

14 Q. Do you understand why they might
15 say that?

16 A. Because it wasn't video.

17 Q. And so when you put text on
18 backgrounds it -- to -- it resembled -- let
19 me start again. So when Healthy Advice put
20 text onto backgrounds as the main form of
21 content that it was providing to practices,
22 you can understand why someone would describe
23 that as essentially a Power Point
24 presentation?

12:08

Melissa Lake, 3/24/2014

119

1 MR. BERNAY: Objection. You can
2 answer.

3 A. Yes.

4 Q. Was the content of the primary
5 care network displayed in your team meeting
6 room during your employment at Healthy
7 Advice?

8 A. Yes.

12:09

9 Q. Did you see a large amount of
10 Healthy Advice's content through that?

11 A. Yes.

12 Q. Did you ever watch Healthy
13 Advice's content at different setting?

14 A. My doctor's office.

15 Q. What network did your doctor
16 have?

17 A. PCN.

18 Q. Did you ever see ACN content?

12:09

19 A. No. Well, I believe it was at
20 the office. I can't remember. Sorry.

21 Q. Do you think as part of training
22 at some point you saw some of the ACN
23 content?

24 A. Yes.

Melissa Lake, 3/24/2014

120

1 Q. In the -- in your meeting room
2 for your team was it always the primary care
3 network or was it sometimes a different
4 network?

5 A. Trying to think of all the flat
6 screens we had. We had several different
7 networks and trying to think of which ones
8 they were. I know PCN for sure.

9 Q. ACN, CCN, and two others, right?

12:10 10 A. Yeah. There was one for
11 OB-GYNs. I remember seeing that one. That
12 was to the right. That was in the center. I
13 believe -- I -- I can't answer if that was
14 ACN or not. I can't remember.

15 MR. BERNAY: We've been going
16 well over an hour, can we take a break?

17 MR. HANKINSON: I was gonna try
18 to just press through --

19 MR. BERNAY: Okay.

12:10 20 MR. HANKINSON: -- to finish but
21 I'm happy to if that's how you'd like to do
22 it.

23 MR. BERNAY: How much -- how
24 much more do you -- I just need a -- need a

Melissa Lake, 3/24/2014

121

1 break. That's all.

2 MR. HANKINSON: Ten to 15
3 minutes probably.

4 MR. BERNAY: Yeah. Let's take a
5 quick break.

6 MR. HANKINSON: Okay.

7 VIDEOGRAPHER: We are going off
8 the video record at 12:09 p.m.

9 (Break taken.)

12:17 10 VIDEOGRAPHER: Okay. We are
11 back on the video record at 12:17 p.m.

12 MR. HANKINSON: When we were
13 talking previously about Power Point, I just
14 want to make sure, you're familiar with Power
15 Point the program, right?

16 A. Yes.

17 Q. And you know what it looks like?

18 A. Yes.

19 Q. You've seen Power Point

12:19 20 presentations before?

21 A. Yes.

22 Q. Many times?

23 A. Yes.

24 Q. When you were discussing the

Melissa Lake, 3/24/2014

122

1 reasons that a practice had decided to switch
2 to a competitor, did the practice ever say
3 anything to you about the competitor
4 posturing about how many screens it had
5 switched out in the past month or year,
6 anything of that nature?

7 A. No.

8 MR. BERNAY: Objection. You can
9 answer.

12:19 10 A. No. I don't remember that.

11 Q. So as you were following your
12 instructions to find out all the reasons that
13 the practice switched, that reason never came
14 up?

15 A. The reason that they were
16 switching all -- Healthy Advice's to Context
17 Media? Is that the question?

18 Q. Yes.

12:20 19 A. No, I haven't. I don't remember
20 coming across a practice that indicated that,
21 that they were switching all their flat
22 screens to Context Media.

23 Q. Do you remember a practice ever
24 saying that it was important to them or that

Melissa Lake, 3/24/2014

123

1 they were switching to Context Media because
2 their impression was that a lot of practices
3 were switching from Healthy Advice to Context
4 Media?

5 A. I don't remember that.

6 Q. It's not something that a
7 practice ever said was important to them?

8 A. That they wanted everything to
9 be the same?

12:20 10 Q. No.

11 A. That they wanted the --

12 Q. That's not the nature of my
13 question.

14 A. Okay. Okay.

15 Q. Just that they wanted to fit in
16 or, you know, like rats abandoning a sinking
17 ship, you know, like that they felt like the
18 competitor was telling them, oh, I switch out
19 X number of screens just last month or over
12:21 20 the course of a year from Healthy Advice to
21 Context Media. Did -- did a practice ever
22 give you a reason of that nature for its
23 switch?

24 MR. BERNAY: Object to the form.

Melissa Lake, 3/24/2014

124

1 You can answer.

2 A. Don't remember that.

3 Q. It never came up?

4 A. Don't remember it coming up.

5 Q. If it did come up, you would put
6 that in your CMS entry, correct?

7 A. Yes.

8 Q. Do you recall a practice ever
9 informing you that the reason it was
10 switching to a competitor, whether it's
11 Context Media or a different competitor, was
12 for the quality of the hardware, the TVs?

13 A. No.

14 Q. So you don't recall that ever
15 making a difference to a practice in your
16 experience?

17 A. No.

18 Q. Earlier you mentioned that you
19 felt it was important to practices that they
20 be able to customize part of the content for
21 their own purposes, correct?

22 A. Yes.

23 Q. Do you think that that is a
24 feature that would cause a practice to choose

Melissa Lake, 3/24/2014

125

1 to keep Healthy Advice in its waiting room
2 it's that important?

3 A. Yes.

4 Q. You received a lot of positive
5 feedback about the ability to customize those
6 parts of the content, right?

7 A. The personalized messages, yes.

12:23

8 Q. And part of your job, setting
9 aside switches, was to check up on practices
10 and make sure they were engaged with the
11 customization program, right?

12 A. Correct.

13 Q. Healthy Advice saw that as a way
14 to keep the practices feeling engaged with
15 its service so that they were more inclined
16 to keep the screen in the waiting room,
17 right?

18 A. Yes.

12:23

19 Q. Healthy Advice wouldn't devote
20 all that time to it unless they thought that
21 it was effective in retaining practices,
22 correct?

23 A. Correct.

24 Q. At the practice that we looked

Melissa Lake, 3/24/2014

126

1 at the e-mail earlier where they said that
2 Context RHN network it's more video, did you
3 encounter that feedback with other practices
4 who were canceling Healthy Advice's network?

5 A. Yes.

6 Q. Certainly that wasn't the only
7 time that came up.

8 A. Right.

9 Q. And, in fact, Healthy Advice
10 12:24 rolled out more video during the latter part
11 of your time working there, right?

12 A. Yes.

13 Q. In response to feedback about
14 competitors having video and Healthy Advice
15 not, right?

16 MR. BERNAY: Objection. You can
17 answer.

18 A. Yes.

19 Q. Because it's important to
20 12:24 practices that there be some sort of video
21 content, if that's available, to engage the
22 patients in the waiting room more than the
23 slides, right?

24 MR. BERNAY: Objection. You can

Melissa Lake, 3/24/2014

127

1 answer.

2 A. Yes. They did have a little bit
3 of video though before they added more.
4 There wasn't a lot but there was some video.
5 Not a lot.

6 Q. Would it be fair to say
7 essentially no video? Virtually no video?

8 A. No. Because there was video
9 with like spin to wins and things like that.

12:25 10 Q. You're referring to pictures
11 moving around on the screen.

12 A. Yes.

13 Q. Not live-action video.

14 A. Right.

15 Q. And Healthy Advice's content was
16 stationary enough, enough resembling slides
17 rather than video, that they needed to make a
18 change to it to respond to competitors who
19 had live-action video, right?

12:25 20 MR. BERNAY: Object to the form.
21 You can answer.

22 A. Yes.

23 Q. If a practice wanted live-action
24 video in the content that it was putting up

Melissa Lake, 3/24/2014

128

1 in its waiting room, before Healthy Advice
2 began its program to put more video in
3 Healthy Advice's programming, that practice
4 would not be able to fulfill that need with
5 Healthy Advice, right?

6 A. At -- it depends on the timing.

7 Q. Right. But before Healthy
8 Advice had the video added in, that practice
9 would have to go elsewhere if they wanted
10 video, right?

11 A. Yes.

12 Q. And so that could be an
13 independent reason that a practice switched.

14 A. Yes.

15 Q. And it's not solvable by
16 anything other than Healthy Advice adding
17 video which is why it did so, correct?

18 A. Yes.

19 Q. That's similar to the situation
20 with sound. When a practice wanted sound
21 before the time that Healthy Advice had sound
22 in its programming, the practice would have
23 to go to a competitor because Healthy Advice
24 didn't have that offering, right?

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Melissa Lake, 3/24/2014

129

1 A. Yes.

2 Q. And where the sound was
3 important to the practice to engage its
4 patients, they might do so on that basis
5 alone, setting aside how good quality Healthy
6 Advice's slides were, right?

7 MR. BERNAY: Objection. You can
8 answer.

9 A. Yes.

12:27 10 Q. We were talking earlier about
11 you being familiar with Healthy Advice's
12 content from it being displayed in the team
13 meeting room at the office --

14 A. Uh-huh.

15 Q. -- and from watching the network
16 and your own physician's office, right?

17 A. Uh-huh. Yes.

18 Q. In -- and part -- partially it
19 relies on quizzes and trivia, right?

12:27 20 A. Uh-huh. Yes.

21 Q. Part of it is advertising the
22 sort of National Health Awareness type months
23 that are happening each month, right?

24 A. Yes.

Melissa Lake, 3/24/2014

130

1 Q. Something I could refer to as
2 like public service advertising?

3 A. Yes.

4 Q. And part of it would be talking
5 about messages that the National Institute of
6 Health or the Center for Disease Control were
7 trying to get out to the public, right?

8 A. Yes.

9 Q. Things about watching your hands
12:28 10 while singing the happy birthday song for
11 instance?

12 A. Yes.

13 Q. To make sure that you wash them
14 long enough, right?

15 A. Yes.

16 Q. And every month in every network
17 there's content geared toward that kind of
18 public service messaging, right?

19 A. Yes.

12:28 20 Q. And that's in addition to the
21 advertising that's sponsored by drug
22 companies or health product companies,
23 correct?

24 A. Yes.

Melissa Lake, 3/24/2014

131

1 Q. And every month there are these
2 sorts of public service advertisements geared
3 toward whatever health month awareness it is,
4 correct?

5 A. Yes.

6 Q. And there are other
7 advertisements that are public service nature
8 about being on a program of daily Asprin to
9 control heart related issues, correct?

12:29 10 A. Yes.

11 Q. There are also other
12 advertisements in Healthy Advice's content
13 each month that encourage patients to get
14 increased levels of preventative screening,
15 right?

16 A. Yes.

17 Q. Like mammograms other
18 preventative screenings?

19 A. Yes.

12:29 20 Q. And that's another type of
21 content that's in the loops each month,
22 correct?

23 A. Yes.

24 Q. And all of those taken together

Melissa Lake, 3/24/2014

132

1 along with the custom messages add up to the
2 Healthy Advice loop, right?

3 A. Yes.

4 MR. BERNAY: Objection.

5 MR. HANKINSON: I think that's
6 all I have.

7 MR. BERNAY: All right. I have
8 no further questions so we'll reserve
9 signature and we're done.

12:30 10 VIDEOGRAPHER: Okay. We are
11 going off video record at 12:28 p.m.

12

13

14

MELISSA LAKE

15

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18 * * *

19 (DEPOSITION CONCLUDED AT 12:28 p.m.)

20 * * *

21

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Melissa Lake, 3/24/2014

133

1 C E R T I F I C A T E

2

STATE OF OHIO

3

: SS

COUNTY OF CLERMONT

4


5

6 I, Deanne Cartwright, the undersigned,
7 a duly qualified notary public within and for
8 the State of Ohio, do hereby certify that
9 MELISSA LAKE was by me first duly sworn to
10 depose the truth and nothing but the truth;
11 foregoing is the deposition given at said
12 time and place by said witness; deposition
13 was taken pursuant to stipulations
14 hereinbefore set forth; deposition was taken
15 by me in stenotype and transcribed by me by
16 means of computer; that the transcribed
17 deposition was submitted to the witness for
18 examination and signature and that signature
19 may be affixed out of the presence of the
20 Notary Public-Court Reporter. I am neither a
21 relative of any of the parties or any of
22 their counsel; I am not, nor is the court
23 reporting firm with which I am affiliated,
24 under a contract as defined in Civil Rule
28(D) and have no financial interest in the
result of this action.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand and official seal of office at
18 Cincinnati, Ohio this 11th day of April,
19 2014.

20

21


Deanne Cartwright

22

23 My commission expires: Deanne Cartwright
24 August 4, 2018 Notary Public - State of Ohio

21

22

23

24

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